91-1789

No.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

FRANK A. PECORA, Senator,
44th Pennsylvania Senatorial District,
Petitioner,
v.
PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT
COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Anthony J. Martin
Counsel of Record
Martin & Martin, P.C.
Monroe Complex, Building One
2520 Mosside Boulevard
Monroeville, Pennsylvania 15146
(412) 372-3879

QUESTIONS PRESENTED FOR REVIEW

1. Did the Respondent Pennsylvania Legislative Reapportionment Commission deprive the Petitioner, State Senator Frank A. Pecora, of the equal protection of the laws in violation of the Fourteenth Amendment by arbitrarily singling out his 44th Senatorial District in western Pennsylvania for elimination in mid-term, where his district was "squeezed out" and his term was truncated in mid-term solely for partisan political reasons and not in order to meet the "one-person, one-vote" mandate of the Equal Protection Clause?

2. Did the Respondent Pennsylvania Legislative Reapportionment Commission, by singling out State Senator Frank A. Pecora's 44th Senatorial District for elimination in mid-term, engage in an unconstitutional, political gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment?

3. Did the action of the Respondent Pennsylvania Legislative Reapportionment Commission in eliminating the old 44th Senatorial District in western Pennsylvania and creating a new 44th Senatorial District in southeastern Pennsylvania unconstitutionally abridge the First Amendment right of the citizens in the new 44th Senatorial District to petition the Pennsylvania Legislature for redress of grievances, in view of the facts that Petitioner Senator Frank A. Pecora can no longer serve as Senator from the 44th District due to State constitutional residency requirements and that no election to fill the new 44th Senatorial District seat will be held until November 1994?

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OPINIONS BELOW

The short per curiam opinion of the Pennsylvania Supreme Court accompanying its February 14, 1992 Order upholding the constitutionality of the Final Plan of the 1991 Pennsylvania Legislative Reapportionment Commission (Pet. App. [hereinafter "A"] 1-3) has yet to be officially or unofficially reported. It should be noted that this opinion states that "[o]pinions will follow" (A 3). As of the date of this Petition, no additional opinions have been issued by the Pennsylvania Supreme Court.

JURISDICTION

The judgment of the Pennsylvania Supreme Court (A 1-3) was entered on February 14, 1992. The jurisdiction of the Court is invoked under 28 *U.S.C.* § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the First Amendment to the United States Constitution, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, Article II, §§ 2, 3, 5, 6, 7, 16, and 17 of the Pennsylvania Constitution, and § 2209 of Title 25 of the Pennsylvania Statutes. These provisions are as follows:

> CONSTITUTION OF THE UNITED STATES
>
> AMENDMENT I.
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> AMENDMENT XIV.
>
> Section 1. Citizens of the United States.
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

ARTICLE II.

§ 2. Election of members; vacancies

Members of the General Assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election. Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.

§ 3. Terms of members

Senators shall be elected for the term of four years and Representatives for the term of two years.

* * *

§ 5. Qualifications of members

Senators shall be at least twenty-five years of age and Representatives twenty-one years of age. They shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year next before their election (unless absent on the public business

of the United States or of this State, and shall reside in their respective districts during their terms of service).

§ 6. Disqualification to hold other office

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under this Commonwealth to which a salary, fee or perquisite is attached. No member of Congress or other person holding any office (except of attorney-at-law or in the national guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth to which a salary, fee or perquisite is attached shall be a member of either House during his continuance in office.

§ 7. Ineligibility by criminal convictions

No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth.

* * *

§ 16. Legislative districts

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous

territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

§ 17. Legislative Reapportionment Commission

(a) In each year following the year of the Federal decennial census, a Legislative Repportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than 60 days following the official reporting of the Federal decennial census as required by Federal law, the four members shall be certified by the President pro tempore to the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within 45 days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within 30 days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within 15 days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

The commission shall have thirty days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall have thirty days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section seventeen.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other

necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportionment districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts

having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

ELECTION OF STATE SENATORS AND REPRESENTATIVES

At the general election in the year one thousand nine hundred and twenty-two, and quadriennially thereafter, Senators shall be chosen to serve for four years in the even-numbered districts. At the general election in the year one thousand nine hundred and twenty-four, and quadriennially thereafter, Senators shall be chosen to serve for four years in the odd-numbered districts.

The Senators now in office shall continue in such office, and shall respectively represent the districts as herein apportioned in which they reside until the expiration of the terms for which they were elected.

STATEMENT OF THE CASE

The Petitioner Frank A. Pecora was originally elected to the Senate of the Pennsylvania Legislature by the voters of the 44th Senatorial District in 1978 (A 6). He was re-elected in 1982, 1986, and 1990 (*Id.*).

The Respondent Pennsylvania Legislative Reapportionment Commission (hereinafter "the Commission") was formed in 1991 for the purpose of engaging in a legislative reapportionment of the Pennsylvania Legislature in the wake of the federal 1990 decennial census. *See Pa. Const.* Art. II, § 17(a). In accordance with the requirements of the Pennsylvania Constitution, *see Pa. Const.* Art. II, §17(b), the following State legislators were appointed as members of the Commission: State Senator Joseph Loeper (Republican), the State Senate Majority Leader; State Senator Robert J. Mellow (Democrat), the State Senate Minority Leader; State Representative H. William DeWeese (Democrat), the State House Majority Leader; and State Representative John M. Perzel (Republican), the State House Minority Chairman (A 97).[1] These four members were unable to agree on the fifth member, who would serve as Chairman of the Commission. Pursuant to *Pa. Const.* Art. II, § 17(b), the Pennsylvania Supreme Court appointed Robert J. Cindrich as the fifth member and Chairman of the Commission (A 100).

The Pennsylvania Constitution divides the Commonwealth into 50 senatorial districts. *Pa. Const.* Art. II, § 16.

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1 The record reflects that State Representative Allen Kukovich (Democrat) acted in behalf of Representative DeWeese in his capacity as Deputy Commissioner for Representative DeWeese (A 97).

From his original election in 1978 until the entry of the Pennsylvania Supreme Court's Order on February 14, 1992, upholding the validity of the Commission's Final Plan of Reapportionment, *see Pa. Const.* Art. II, § 17(e), the 44th Senatorial District was located in Allegheny County in western Pennsylvania. Altogether, seven senatorial districts were located in Allegheny County: four even-numbered districts (Districts 38, 40, 42, and 44), and three odd-numbered districts (Districts 37, 43, and 45) (A 24-26, 103).

Pennsylvania State Senators are elected to staggered, four-year terms of office. *See Pa. Const.* Art. II, §§ 2 and 3; Act of May 16, 1921, P.L. 449, codified at 25 *P.S.* § 2209. Beginning in 1924 and every four years thereafter, Senators have been elected from the odd-numbered districts. Thus, State Senators representing odd-numbered districts were last elected in November 1988 and consequently face reelection in November 1992. Likewise, beginning in 1921 and every four years thereafter, Senators were elected from the even-numbered districts. Senators presently representing even-numbered districts were elected in November 1990 and will not face reelection until November 1994.

Under the Commission's plans of reapportionment drawn up in the wake of the federal decennial censuses of 1970 and 1980, no State Senator's term was truncated in mid-term. In 1970, the boundaries of only the odd-numbered senatorial districts were changed, and in 1980 only the even-numbered districts' boundaries were altered, thereby insuring that no State Senator's four-year term of office would be cut off in mid-term (A 8).

The 1990 decennial census data showed that Allegheny County had suffered a decline in population of over 125,000 people since 1980 (A 24-25, 104). When analyzed by district, the following population losses were recorded:

Odd-numbered Districts

Dist.	Party Affil.	1990 Pop.	Loss
37	(Sen. Fisher-Rep.)	229,901	8,570
43	(Sen. Dawida-Dem.)	212,035	26,687
45	(Sen. Blean-Dem.)	210,735	26,796

Even-numbered Districts

Dist.	Party Affil.	1990 Pop.	Loss
38	(Sen. Bodack-Dem.)	208,321	30,506
40	(Sen. Hart-Rep.)	234,439	2,297
42	(Sen. Scanlon-Dem.)	218,170	7,943
44	(Sen. Pecora-Rep.)	223,153	13,776

(A 25-26.)

As can be seen from these figures, the four Democratic districts in Allegheny County (Districts 38, 42, 43, and 45), all located within the City of Pittsburgh and southeastern Allegheny County (Mon Valley) (A 104), lost a total of 101,932 people (A 24). On the other hand, the three Republican districts (Districts 37, 40, and 44), located outside the City of Pittsburgh (A 104), lost just 24,643 people (A 25), "almost one-fourth the number of loss as within the city" (A 104).

Despite the statistics demonstrating the major loss of population in the City of Pittsburgh/Mon Valley and the relatively minor loss of population in the three districts outside the City, including the 44th District, and despite the Commission's past practice of avoiding the truncation of the terms of State Senators in mid-term, the 1991 Final Plan of Reapportionment (A 41-94) calls for the elimination of Senator Pecora's 44th Senatorial District and the creation of a new 44th District in an area of southeastern Pennsylvania (A 81-82, 92, 94).[2]

The Pennsylvania Constitution contains two residency requirements for State Senators, a "one year next before" residency requirement,[3] and a "term of service" residency

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2 The new 44th District covers parts of Berks, Chester, Lehigh, and Montgomery Counties (A 81-82, 94).

3 The Pennsylvania Constitution provides that Senators "*shall have been* citizens and inhabitants of the State for four years, and *inhabitants of their respective districts one year next before their election[.]" Pa. Const.* Art. II, § 5 (emphasis added). The term

requirement.[4] The 44th Senatorial District having been moved to southeastern Pennsylvania, Senator Pecora no longer meets either one of these State constitutional residency requirements, thereby making it impossible for him to continue to serve as the Senator for the new 44th Senatorial District. The 1991 Final Plan of Reapportionment therefore effectively truncated Senator Pecora's four-year term of office in mid-term. No other Senator's term was truncated in mid-term by the 1991 Final Plan, which allowed all of the other incumbent Senators to serve out their full four-year terms.

A review of the record of the hearing held by the Commission on the 1991 Preliminary Plan of Reapportionment on September 25, 1991 provides compelling support for the conclusion of fact that the Commission, in eliminating the old 44th Senatorial District in Allegheny County and in creating the new 44th Senatorial District in eastern Pennsylvania, was motivated solely by partisan political concerns. The sole member of the Commission who voted against the adoption of the Preliminary Plan of Reappor-

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"inhabitant" as used in § 5 of Article II means "the most permanent type of dweller or resident." *In re Lesker*, 377 Pa. 411, 105 A.2d 376, 378 (1954). Thus, a candidate for State Senator must "be an inhabitant (a permanent resident) within his claimed legislative district; and he must have resided there, that is, maintained a permanent home establishment there, for at least a year." 105 A.2d at 378.

4 Pennsylvania State Senators "shall reside in their respective districts *during their terms of service.*" *Pa. Const.* Art. II, § 5 (emphasis added) (see also A134-135).

tionment, essentially because it eliminated the 44th Senatorial District in Allegheny County, namely Senator Loeper (A 122-123), expressed the opinion that the Commission, in adopting a reapportionment plan, should be guided solely by population shifts and not by partisan concerns. Thus, Senator Loeper stated as follows:

> I don't believe that our mission is to make sure that there is a partisan balance as far as the House and Senate is concerned. I believe that our mission is not to have to merge a Republican and Democratic district, and I think that what we have to base our decisions on are the demographics of the area.

(A 103.)

In response to Senator Loeper's comments, Chairman Cindrich initially stated, "I think it's nothing short of preposterous to suggest that politics play no part in a reapportionment" (A 110). Cindrich then elaborated on this comment as follows:

> To suggest . . . that it is possible, given the constitutional mandate as to the creation of the Commission, to construct any form of reapportionment plan for the State without taking into account political issues such as the balance of political power, protection of incumbencies, is, as I have already said, preposterous, and I don't think I need to comment any further on it.

(A 111.)

The Chairman then admitted that the question of the political balance of power had dominated the Commission's deliberations concerning reapportionment:

> [W]hat we have tried to do, what I have tried to do as a neutral, is listen to the arguments of both parties as to how their political opportunities will be enhanced or damaged by one configuration or another. As a matter of fact, *I would say that about 99 percent of the discussion we have had over the past 90 days has been along those lines.*

(A 113 (emphasis added).)

With respect to the 44th Senatorial District question, Cindrich made the following very revealing comments:

> Now, with regard to Allegheny County, there is no question that the demographics, and that is the shift in population has mandated that a Senate seat be lost. There simply are not enough people in that side of the State to support as many Senators as were supported before, when you consider that we need about 238,500 per Senate seat. *So one of them had to be squeezed out.*
>
> The political parties take positions. Naturally, if you are a Democrat, a good position is to say that you should combine two Republican districts so that there will only be one Republican left. And if you're a Republican, as the Republicans did propose, you should combine two

> Democrat districts as that there will be one less Democrat around. And if you're a neutral Chairman you say, *why don't you combine one of each so that neither of you gains an advantage* by virtue of the fact that the Constitution requires us to match up the population with the district, and that's what the Chairman did.

(A 114-115 (emphasis added).) In other words, Cindrich "called it as I see it, and yes, *there is an element of politics in that decision*, and I say it because as I've indicated prior, to suggest otherwise would be just to deny reality and deny the very composition of this Commission" (A 117 (emphasis added)).

Aside from "political balance of power" concerns, Chairman Cindrich also admitted that party strength, as indicated by percentage of party registration, played a major part in the "squeeze out" of Senator Pecora's district:

> Now, as to a couple of other points about demographics. When you look at the shift in the loss in population in the Allegheny County area, *what we find is that it had little or no effect on the registration of people there, the party registration*. So that while the Republican argument was that Democrats should lose two seats, in fact 10 years ago the registration was roughly 70 percent Democrat, 30 percent Republican. Ten years later, same area looking at it from a jet up high, still 70 percent Democrat, 30 percent Republican. *I was hard-pressed to determine why that should mean the loss of an incumbent seat for the Democrats*.

* * *

> So that on balance with the population going east and that seat being clearly a seat that will favor a Republican candidate by very strong voter trends and by very strong registrations, then in the west both parties lost a side. *If we had gone the other way we would have the rather anomalous situation of the Allegheny County region having a 70-30 voter registration edge and having a 50-50 party split in terms of the representation in the Senate of Pennsylvania. It didn't seem to the Chairman to be an appropriate thing to do.*

(A 118, 120 (emphasis added).)

Following its review and discussion of the 1991 Preliminary Reapportionment Plan on September 25, 1991, the Commission voted four to one to adopt the Plan (A 5-6, 122-123). Pursuant to the requirements of *Pa. Const.* Art. II, § 17(c), the Commission held a public meeting on October 9, 1991, at which any person aggrieved by the Preliminary Plan could file exceptions thereto with the Commission (A 6, 125-130). On October 9, 1991, Senator Pecora filed his written Exceptions, with a Memorandum in Support thereof, with the Commission (A 6, 127). As part of his written Exceptions, Senator Pecora submitted an alternative reapportionment plan, limiting the elimination of a Senatorial district to the odd-numbered districts in Allegheny County. This alternative plan proposed districts with population deviations that were comparable to and not significantly, if at all, greater than those contained in the Commission's 1991 Final Plan of Reapportionment (A 9-10, 26-29).

At its meeting held on November 15, 1991, the Commission rejected the Petitioner's Exceptions and adopted the 1991 Final Plan of Reapportionment by a three to two vote, State Senators Loeper and Mellow voting against adoption of the Final Plan (A 6-7, 132-133). Thus, Chairman Cindrich provided the key "swing" vote in favor of the Final Plan.

On or about December 9, 1991, Senator Pecora filed a timely Petition for Review (A 4), together with a supporting Brief of Petitioner (A 17), with the Pennsylvania Supreme Court, seeking to set aside that portion of the Final Plan of Reapportionment eliminating the 44th Senatorial District (A 13). In his Petition for Review, Senator Pecora specifically alleged that by eliminating Petitioner's 44th Senatorial District in mid-term, the Commission "has violated various provisions of the Constitution of Pennsylvania, *the right to petition as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States, the Equal Protection Clause of the Constitution of the United States*, controlling decisional law of the Federal Courts and of the Courts of the Commonwealth of Pennsylvania" (A 7 (emphasis added)). Both the "right to petition" question (A 18-23) and the "equal protection" questions (A 29-40) were argued at length in Senator Pecora's Brief of Petitioner.

On February 14, 1992, the Pennsylvania Supreme Court entered an Order and Per Curiam Opinion (A 1-3), wherein it stated that "this Court, after consideration of the objections raised in the above-captioned petitions [including Senator Pecora's Petition for Review], finds that the Final Plan of the 1991 Pennsylvania Legislative Reapportionment Commission is not contrary to law, and the Petitions for Review are denied" (A 2). Senator Pecora now seeks to have this Order reviewed in this Court by way

of the issuance of a Writ of Certiorari to the Pennsylvania Supreme Court.

REASONS WHY THE PETITION SHOULD BE GRANTED

The Petition presents a novel and important question of federal constitutional law as to whether, in reapportioning the voting districts for a state legislature, a state reapportionment commission may single out one incumbent Senator for unfavorable treatment by eliminating his voting district and truncating his term of office in mid-term for solely partisan political reasons, without violating the Equal Protection Clause of the Fourteenth Amendment.

In announcing the principle of "one person, one vote" to compel states to eliminate gross disparities among voting district populations, this Court in *Reynolds v. Sims*, 377 U.S. 533 (1964), "plainly recognized that redistricting should be based on a number of neutral criteria, of which districts of equal population was only one." *Davis v. Bandemer*, 478 U.S. 109, 167 (1986) (Powell, J., concurring in part and dissenting in part). These neutral criteria include assuring that districts are compact and cover contiguous territory, *Reynolds v. Sims*, *supra*, 377 U.S. at 578-79, as well as adherence to the boundaries of established political subdivisions. *Id.* at 580-81. Thus, as the Court recognized in *Gaffney v. Cummings*, 412 U.S. 735 (1973):

> Fair and effective representation may be destroyed by gross population variations among districts, but it is apparent that such representation does not depend solely on mathematical equality among district populations. There are other relevant factors to be taken into account and other important interests that States may legitimately be mindful of.

Id. at 748-49.

On the other hand, certain criteria or interests are clearly not among "the important interests that States may legitimately be mindful of" when redistricting. Thus, the factor of incumbency "has no place in any reapportionment or redistricting." *Klahr v. Williams*, 313 F. Supp. 148, 152 (D. Ariz. 1970), *aff'd sub nom. Ely v. Klahr*, 403 U.S. 108 (1971). Likewise, the consideration of party strength is "inapposite" as a factor in reapportionment or redistricting. 313 F. Supp. at 152. These and other purely partisan political considerations are not legitimate goals of redistricting.

It is well established that to survive an equal protection attack under the rational basis test, a classification must be rationally related to the promotion of a legitimate state goal or interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985). This standard recognizes that some objectives, such as a bare desire to harm a politically unpopular group, *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973), or deferring to the irrational negative attitudes or fears of certain citizens toward others, *City of Cleburne v. Cleburne Living Center*, *supra*, 473 U.S. at 448, "are not legitimate state interests." *Id.* at 446-47.

In the case at bar, the 1991 Final Plan of Reapportionment created two classifications of State Senators, namely those State Senators allowed to complete their full four-year terms of office, and a single Senator, the Petitioner, whose term was cut off in mid-term by the Plan. No previous legislative reapportionment plan adopted by the Commission had ever resulted in the premature truncation of a State Senator's term of office. In adopting the 1991 Plan, the Commission nevertheless intentionally chose to single out Senator Pecora's former 44th Senatorial District for elimination and thereby to deprive Senator Pecora of the

ability to serve out his full four-year term in the General Assembly.

The Commission "squeezed out" Senator Pecora not in order to serve some legitimate goal of redistricting such as satisfying the constitutional mandate of "one person, one vote" or creating districts that were somehow more compact or more closely contiguous with political subdivision lines. Rather, the Commission chose to eliminate Senator Pecora's former 44th Senatorial District solely to maintain the political status quo or "political balance of power" in both the Pennsylvania Senate and the State Legislature taken as a whole. Senator Pecora was deliberately sacrificed in order to create a district with a strong one-party (i.e., Republican) registration in southeastern Pennsylvania, while merging Senator Pecora's former district, having a large majority of registered Democrats, with a former Democratic district so as to increase the likelihood of a Democrat being elected from the new district in Allegheny County created by this merger.

Certainly, the partisan political purpose for eliminating Senator Pecora's district and truncating his term, namely to maintain the political status quo or balance of power in the State Legislature, was not a legitimate governmental purpose of redistricting. Consequently, the disadvantageous treatment of Senator Pecora for purely partisan political reasons did not rationally promote any legitimate State goal, thereby violating the Senator's right to equal protection. The Petition should therefore be granted in order to remedy the Commission's violation of Senator Pecora's Fourteenth Amendment right to the equal protection of the laws and to deter similar violations in future legislative reapportionments.

Senator Pecora's Petition also raises an important question as to whether the Commission's action in singling out

the Petitioner's 44th Senatorial District for elimination amounted to an unconstitutional political gerrymander[5] in violation of the Equal Protection Clause of the Fourteenth Amendment. As a majority of the Court has yet to adopt a uniform test or standard for evaluating claims of political gerrymandering under the Equal Protection Clause, this Petition presents an opportunity for the Court to clarify the law in this area.[6]

---

5 Gerrymandering has been defined as "the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes." *Davis v. Bandemer, supra*, 478 U.S. at 164 (Powell, J., concurring in part and dissenting in part) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 538 (1969) (Fortas, J., concurring)). This definition properly focuses on "whether the boundaries of the voting districts have been distorted deliberately and arbitrarily to achieve illegitimate ends." 478 U.S. at 165.

6 As Justice Powell noted in his separate opinion in *Davis v. Bandemer, supra*, the Court's decision in *Davis* failed to enunciate any standard that affords guidance to legislatures and courts: "Legislators and judges are left to wonder whether compliance with 'one person, one vote' completely insulates a partisan gerrymander from constitutional scrutiny, or whether a fairer, but as yet undefined standard applies. The failure to articulate clear doctrine in this area . . . appears to signal the 'constitutional green light' to would-be gerrymanders." 478 U.S. at 171-73 (Powell, J. concurring in part and dissenting in part) (footnotes omitted).

The Court first addressed the issue of political gerrymandering in *Davis v. Bandemer*, *supra*. In that case, the Indiana State Legislature, both houses of which had Republican majorities, and Indiana's Republican Governor approved a legislative district reapportionment plan which was allegedly designed to maintain Republican control of the legislature. The plan was recommended by a conference committee consisting entirely of Republicans. A number of Indiana Democrats filed suit against various state officials in Indiana federal district court, alleging that the reapportionment plan was intended to and did violate their rights, as Democrats, to equal protection under the Fourteenth Amendment.

In reversing the decision of a three-judge district court declaring the reapportionment plan unconstitutional, the Court, by a vote of six to three, held that a political gerrymandering claim, i.e., a claim alleging that a reapportionment plan for state legislative districts violates the rights of members of a political party to the equal protection of the laws under the Fourteenth Amendment because the district lines were drawn with the intention and effect of disadvantaging members of that party, is not a nonjusticiable political question but presents a justiciable controversy. 478 U.S. at 124-25. These six members of the Court, however, split over the question of whether the plaintiffs had in fact presented a viable political gerrymandering claim.

A plurality of four Justices concluded that the plaintiffs in a political gerrymandering case are "required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect." *Id.* at 127. Moreover, according to the plurality, "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." *Id.* at 132. In other words, "a finding of unconstitu-

tionality must be supported by evidence of continued frustration of the will of a majority of voters or effective denial to a minority of voters of a fair chance to influence the political process." *Id.* at 133. As the proof before the district court did not meet this highly restrictive test, the plurality joined with the three dissenters on the justiciability issue in reversing the district court's judgment.

Justice Powell, joined by Justice Stevens, filed a dissenting opinion, concluding that the merits of a political gerrymandering claim turn on whether the boundaries of voting districts have been distorted deliberately and arbitrarily to achieve illegitimate ends, which must be determined by reference to a number of factors, including the configuration of the districts, the observance of political subdivision lines, the nature of the procedures by which the apportionment law was adopted, and legislative history reflecting contemporaneous legislative goals, including any evidence of solely partisan motivation. *Id.* at 173, 177-78.[7] Justice Powell further stated that "[t]he District Court found, and I agree, that appellants failed to justify the discriminatory impact of the plan by showing that the plan had a rational basis in permissible neutral criteria." *Id.* at 184.

---

7 Thus, Justice Powell found that "the record unequivocally demonstrates that in 1981 the Republican-dominated General Assembly deliberately sought to design a redistricting plan under which members of the Democratic party would be deprived of a fair opportunity to win control of the General Assembly at least until 1991, the date of the next redistricting." *Id.* at 178.

Of course, a fundamental difference exists between *Davis* and the case at bar. In *Davis*, voters from one party challenged an entire legislative reapportionment plan that allegedly disadvantaged that party's voters. In the case at bar, Senator Pecora, an incumbent State legislator, is challenging only one particular aspect of a legislative reapportionment plan as deliberately and arbitrarily singling him out for unfavorable treatment. In accordance with this key difference, the test that should be applied to Senator Pecora's equal protection claim should not be as stringent as that applied by the plurality opinion in *Davis*.

Petitioner respectfully submits that the correct test to be applied to the type of case presented here is that formulated by Justice Powell in his dissenting opinion in *Davis*. In view of the record evidence, it can readily be seen that the Commission deliberately and arbitrarily distorted the boundaries of voting districts by eliminating Senator Pecora's former 44th Senatorial District located in western Pennsylvania and creating a new 44th District in southeastern Pennsylvania on the opposite side of the State. Moreover, the Commission carried out this distortion of voting district boundaries in order to achieve illegitimate, partisan ends, i.e., to preserve or maintain the status quo or political balance of power within the State Senate.

Evidence of this political gerrymandering can be found not only in the record of the Commission's proceedings, but also by reference to the configuration of the districts created by the Final Plan and the fact that the Commission departed from its consistent prior practice, in formulating and adopting legislative redistricting plans, of avoiding the truncation of the terms of Senators in mid-term. Nor has the Commission advanced any justification for the discriminatory impact of the 1991 Plan in achieving the "squeeze out" of Senator Pecora's district that has a rational basis in neutral criteria. The Petition should therefore be granted

to invalidate the Commission's unconstitutional political gerrymander and to restore the former 44th District, thereby enabling Senator Pecora to serve out his full four-year term of office. The Court would thereby signal a "constitutional red light" to all would-be gerrymanders in future redistricting in Pennsylvania and other states.

The Petition also raises a novel and important question of federal constitutional law as to whether the Commission's action, by leaving the residents of the new 44th Senatorial District without a representative in the Senate of the Pennsylvania General Assembly, unconstitutionally abridges the rights of these residents to exercise their First Amendment right to petition the Pennsylvania Legislature for redress of grievances.[8]

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8 Petitioner may assert the First Amendment rights of the inhabitants of the new 44th Senatorial District under the doctrine of *jus tertii*. While ordinarily "one may not claim standing . . . to vindicate the constitutional rights of some third party," *Barrows v. Jackson*, 346 U.S. 249, 255 (1952), the concern that rights are most effectively asserted by those owning them is sufficiently eased to allow surrogate standing where there are circumstantial assurances of a litigant's effective advocacy of third-party rights. *Id.* at 258. Such assurances are provided where the relationship between the state-enforced measure, the injury to the litigant, and the purpose or effect of the measure naturally compels the litigant to fully and aggressively assert the constitutional claims of the third persons. *Id.* Where such assurances exist, the litigant may assert the rights of third parties that would be diluted or adversely affected should his constitutional challenge fail. *Carey v. Population*

The right to petition for a redress of grievances is "among the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967). It is cut from the same cloth as the other guarantees of the First Amendment, and "is an assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. 479, 482 (1985). In *United States v. Cruikshank*, 92 U.S. (2 Otto) 542 (1876), the Court declared that this right is implicit in "[t]he very idea of government, republican in form." *Id.* at 552.

The First Amendment's guarantee of the right to petition, which applies to the states through the Fourteenth Amendment, *see Procunier v. Martinez*, 416 U.S. 396, 406

Services International, 431 U.S. 678, 684 (1977); *Craig v. Boren*, 429 U.S. 190, 195 (1976). In the case at bar, the state-enforced measure in question, namely the 1991 Reapportionment Plan, caused an injury-in-fact to Petitioner by eliminating his 44th Senatorial District in western Pennsylvania and creating a new, unrepresented 44th District in southeastern Pennsylvania, thereby making it impossible for Petitioner to serve out his full four-year term as State Senator. Consequently, Senator Pecora will naturally be compelled to assert fully and aggressively the constitutional claims of the inhabitants of the new 44th Senatorial District in order to have this redistricting overturned. Senator Pecora should therefore be permitted to assert the rights of the inhabitants of the new 44th Senatorial District, whose fundamental First Amendment rights will be diluted or adversely affected should the Petitioner's constitutional challenge fail.

(1974); *Franco v. Kelly*, 854 F.2d 584, 589 (2d Cir. 1988), "extends to all departments of the Government," *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972), including the legislative department. *Eastern Railroad Presidents' Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961); *Novosel v. Nationwide Insurance Co.*, 721 F.2d 894, 899 n.7 (3d Cir. 1983).

This Court has "recurrently treated the right to petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression." *McDonald v. Smith*, *supra*, 472 U.S. at 490 (Brennan, J., concurring). This similar treatment stems from the fact that "the Petition Clause . . . was inspired by the same ideals of liberty and democracy that gave us the freedoms to speak, publish, and assemble." *Id.* at 485. As these First Amendment rights are "inseparable," *Thomas v. Collins*, 323 U.S. 516, 530 (1945), no sound basis exists for granting any greater or lesser constitutional protection to exercises of the right to petition than other First Amendment expressions. *McDonald v. Smith*, *supra*, 472 U.S. at 485, 490 (Brennan, J., concurring).

It is a well-established principle of First Amendment jurisprudence that where a statute or other enactment does not directly abridge free speech, but tends to have the incidental effect of inhibiting First Amendment rights, it can only be upheld if the effect on the exercise of the First Amendment right in question is minor in relation to the need for control of the conduct and the lack of alternative means for doing so. *Younger v. Harris*, 401 U.S. 37, 51 (1971); *United Mine Workers of America, District 12 v. Illinois State Bar Association*, *supra*, 389 U.S. at 225. In the case at bar, the effect of the adoption of the 1991 Final Plan of Reapportionment by the Commission substantially impairs the ability of the inhabitants of the newly created 44th Senatorial District to exercise their First Amendment

right to petition the Pennsylvania Legislature, as these residents of Pennsylvania will be left without any representative in the State Senate until after the general election to be held in November 1994.[9] While the First Amendment's

---

9 The Pennsylvania Constitution does provide that "[w]henever a *vacancy* shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term." *Pa. Const.* Art. II, § 2 (emphasis added). The term "vacancy," however, has been narrowly construed by the Pennsylvania courts, in the context of appointments to fill "vacancies" in judicial offices, as meaning when the occupant of the office actually dies, resigns, retires, is removed or disqualified, or his term of office ends. *Creamer v. Twelve Common Pleas Judges*, 443 Pa. 484, 281 A.2d 57, 68 (1971); *Barbieri v. Shapp*, 29 Pa. Commw. 594, 372 A.2d 939, 943 (1977), *rev'd on other grounds*, 476 Pa. 513, 383 A.2d 218 (1978); *Staisey v. Tucker*, 7 Pa. Commw. 649, 300 A.2d 518, 520 (1973); *see Pa. Const.* Art. V, § 13 (b). Moreover, the term "vacancy" does not generally refer to the condition of an office when it has been first created and has been filled by no incumbent. *Commonwealth v. Dickert*, 195 Pa. 234, 241, 45 A. 1058, 1061 (1900); *Staisey v. Tucker*, *supra*, 300 A.2d at 520. In the case at bar, Senator Pecora has not resigned or retired, nor has he been removed or disqualified under *Pa. Const.* Art. II, §§ 6 or 7. Nor has his four-year term of office ended. Rather, the Petitioner's term of office was truncated or cut off prematurely by the elimination of the 44th Senatorial District in Allegheny County. Consequently, no "vacancy" has been created within the meaning attributed to that term by the Pennsylvania courts. In

right to petition does not limit citizens to petitioning only those representatives for whom they have voted, "it is clear that legislators will be most responsive to citizens who place them in office and who, more importantly, reserve the power to . . . return him to office by reelection." *In re Reapportionment of the Colorado General Assembly*, 647 P.2d 191, 199 (Colo. 1982). Thus, "full protection of this constitutional right requires that each district have an identifiable representative at all times." *Id.* at 199.[10]

Nor does the need to achieve compliance with the "one-person, one-vote" mandates of the United States and Pennsylvania Constitutions justify this major, albeit indirect, abridgement of the right to petition belonging to the residents of the new 44th Senatorial District. The record demonstrates that an alternative means existed for the accomplishment of the goal of achieving compliance with the "one-man, one-vote" principle that would have left the fundamental right of all of the residents of Pennsylvania to petition the State Legislature fully intact. The Commission

---

addition, since the new 44th Senatorial District created in southeastern Pennsylvania has never had an incumbent, the *Dickert* decision indicates that there is no "vacancy" in that district within the meaning of *Pa. Const.* Art. II, § 2 so as to trigger the duty to hold a special election to fill this seat.

10 The comments of the Colorado Supreme Court in *In re Reapportionment of the Colorado General Assembly*, *supra*, were made with respect to that court's interpretation of *Colo. Const.* Art. II, § 24, which guarantees the right of the people to petition "those invested with the powers of government for the redress of grievances."

could have, as it had done in the wake of the 1970 and 1980 censuses, altered the boundaries of only those districts up for reelection in 1992, in this case the odd-numbered districts.

For political partisan reasons, however, the Commission refused to adopt this ready alternative. Instead, the Commission decided to sacrifice the First Amendment rights of the inhabitants of the newly created 44th Senatorial District in order to maintain the political status quo, or balance of partisan representation, in the State Legislature. First Amendment rights, however, cannot be suppressed, even indirectly, merely on the basis of political expediency. As the Final Plan's abridgement of the right to petition was totally unnecessary in order to achieve the State's legitimate goal of redistricting the State Legislature to meet State and federal guarantees of equal representation, this Court should grant the Petition to remedy this substantial infringement of First Amendment rights.[11]

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11 While neither this Court nor any other federal court has addressed the question presented here, at least one state supreme court has struck down a reapportionment plan requiring a district to go unrepresented for two years as violative, inter alia, of that state's equivalent of the right to petition. *McCall v. Legislative Assembly*, 291 Or. 663, 634 P.2d 223, 235 (1981); *see Or. Const.* Art. I, § 26, which guarantees to the citizens of Oregon the freedom of "instructing their Representatives."

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ANTHONY J. MARTIN
Counsel of Record
Martin & Martin, P.C.
Monroe Complex, Building One
2520 Mosside Boulevard
Monroeville, Pennsylvania 15146
(412) 372-3879

(2)

91-1789

Supreme Court, U.S.
FILED
MAY 1 1992
OFFICE OF THE CLERK

No.

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1991

FRANK A. PECORA, Senator,
44th Pennsylvania Senatorial District,

Petitioner,

v.

PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITIONER'S APPENDIX

Anthony J. Martin
Counsel of Record
Martin & Martin, P.C.
Law Firm No. 179
2520 Mosside Boulevard
Monroe Complex, Building 1
Monroeville, Pennsylvania 15146
(412) 372-3879

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[J-32 through 56-1992]
IN THE SUPREME COURT OF PENNSYLVANIA

In Re 1991 PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT COMMISSION	: Nos. 190, 191, 194, 196, 197, 199, 200, and 201 E.D. Misc. Docket 1991 : : Petitions for Review of the 1991 Pennsylvania Legislative Reapportionment Commission's Final Plan : : Nos. 49, 50, 51, 52 53, 54, 56, and 57 M.D. Misc. Docket 1991 : : Petitions for Review of the 1991 Pennsylvania Legislative Reapportionment Commission's Final Plan : : Nos. 124, 132, 133, 134, 135, 136, 137, 138, and 141 W.D. Misc. Docket 1991 : : Petitions for Review of the 1991 Pennsylvania Legislative Reapportionment Commission's Final Plan : : ARGUED: January 25, 1992

O R D E R

PER CURIAM

AND NOW, this 14th day of February, 1992, pursuant to Article 2, Section 17(d) of the Pennsylvania Constitution, this Court, after consideration of the objections raised in the above-captioned petitions, finds that the Final Plan of the 1991 Pennsylvania Legislative Reapportionment Commission is not contrary to law, and the Petitions for Review are denied.

The deadline of February 18, 1992 for filing of nominating petitions is hereby extended until the close of business hours on Friday, March 6, 1992.

It is further ordered that as to the nominating signatures acquired prior to the date of this order, the same shall be deemed valid as to timeliness, subject,

however, to any other statutory challenge.

Opinions will follow.

Mr. Justice Larsen did not participate in the consideration or decision of these cases.

Mr. Justice Flaherty did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; Nos. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

Mr. Justice Papadakos did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; Nos. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FRANK A PECORA, Senator, 44th Senatorial District,	:	
Petitioner,	:	
vs.	:	NO. 132 W.D. MISCELLANEOUS
PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT COMMISSION,	:	DOCKET 1991
Respondent.	:	

PETITION FOR REVIEW

TO THE LEGISLATIVE REAPPORTIONMENT COMMISSION:

You are hereby notified to plead to the enclosed PETITION FOR REVIEW within thirty (30) days from service hereof.

Anthony J. Martin, Esquire
Pa. I.D. No. 00091

MARTIN AND MARTIN, P.C.
Law Firm No. 179
2520 Mosside Boulevard
Monroe Complex, Building 1
Monroeville, PA 15146
(412) 372-3879

Counsel for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FRANK A. PECORA, Senator, 44th Senatorial District,	:
Petitioner,	:
vs.	:
PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT COMMISSION,	:
Respondent.	:

PETITION FOR REVIEW

1. Jurisdiction of this Honorable Court is based upon Section 17(d) of Article II of the Constitution of Pennsylvania, and Pennsylvania Rules of Appellate Procedure, Rule 3321 and Rule 1501, and in accordance with Rule 1511.

2. On or about September 25, 1991, the Legislative Reapportionment Commission, following its review and discussion of the Preliminary Reapportionment Plan, and after a majority vote of the Commis-

sion adopting the Plan, ordered said Plan to be filed with the election office.

3. Pursuant to the requirements of Article II, Section 17(c), the Commission held a public meeting on October 9, 1991, whereat any person aggrieved by the Preliminary Plan was granted the right to file Exceptions to the Plan with the Commission.

4. On October 9, 1991, Petitioner filed his written Exception, with Memorandum In Support thereof, with the Commission. It is noted that Petitioner was elected to the Senate in the 44th Senatorial District in 1978, and was re-elected in 1982, 1986 and 1990.

5. The Commission, at its meeting held on November 15, 1991, rejected the Petitioner's Exceptions and, as a result thereof, the Commission's Plan thereupon

became final and this Petition For Review follows.

6. The objections to the Preliminary Reapportionment Plan, which the Respondent has rejected and which form the basis for this Petition For Review, are as follows:

a. The Respondent, by eliminating the Petitioner's 44th Senatorial District, in mid-term, has violated various provisions of the Constitution of Pennsylvania, the right to petition as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States, the Equal Protection Clause of the Constitution of the United States, controlling decisional law of the Federal Courts and of the Courts of the Commonwealth of Pennsylvania.

b. The Respondent, by eliminating the Petitioner's 44th Senatorial

District, in mid-term, has violated not only Pa. Const. art. II, §§2 and 3, prescribing a four-year term for Senators elected to the General Assembly, but has also violated and ignored prior Legislative Reapportionment Commission Plans, applicable to the Federal dicennial [sic] censuses of 1970 and 1980, which complied with Constitutional standards and decisional law applicable to 1960 Federal dicennial [sic] census. In 1970, the odd-numbered districts were changed, and in 1980 the even-numbered districts were changed, thereby insuring no mid-term Senatorial term termination. It follows that only the odd-numbered Senatorial terms in 1990 would comply with this Constitutional mandate.

c. A review of the record of the Legislative Reapportionment Commission held on September 25, 1991, compel-

lingly supports the conclusion of fact and law that the Commission, in adopting the subject Plan, ignored factors which are mandated by the Constitution and applicable decisional law, but also reflected factors specifically rejected by decisional law and have no basis in the Constitution of Pennsylvania nor the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in adopting its Final Plan.

7. Petitioner did submit to the Respondent, at the hearing of October 9, 1990, a recommended alternative Reapportionment Plan, limiting the elimination of a Senatorial district to the odd-numbered districts in Allegheny County, which is consistent with all applicable Constitutional provisions of both the Commonwealth of Pennsylvania and of the United States, the decisional law of the

Federal and Pennsylvania Courts, as well as the constitutionally appropriate prior action of the prior Reapportionment Commissions in 1970 and 1980. In addition, Petitioner's alternative Reapportionment Plan proposes districts with population deviations that are comparable to and not significantly, if at all, greater than those contained in the Respondent Commission's Final Plan.

8. The Respondent, by conforming with Constitutional mandates and setting aside a nefarious ulterior motive, would well have avoided a Constitutional crisis by simply eliminating one of the odd-numbered districts (Senatorial Districts 37, 43 and 45) in Allegheny County, and moving said district to eastern Pennsylvania. This fair and Constitutionally appropriate action would not only have avoided violating Pa. Const. art. II, §§

2 and 3, by obviating the need to truncate Petitioner's four-year Senatorial term in mid-term, but would also have avoided the serious infringement and deprivation of the fundamental right to petition, as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States and by Pa. Const. art I, §§ 1, 20, 25 and 26, of those citizens of eastern Pennsylvania who have been deprived of any and all representation in the Senate House for two years under the Respondent Commission's Plan.

9. The Respondent's Final Plan has failed to eliminate an odd-numbered Senatorial district in Allegheny County, which would have satisfied all Constitutional and decisional law criteria applicable to the Federal dicennial [sic] census requiring reapportionment, and thereby have preserved Petitioner's Sena-

torial term, as mandated by the Pennsylvania Constitution, Pa. Const. art. II, §§ 2 and 3, and afforded full protection to the fundamental right of the citizens of Pennsylvania to petition their legislature as guaranteed by the First and Fourteenth Amendments of the United States Constitution and Pa. Const. art. I, §§ 1, 20, 25 and 26.

10. Petitioner, therefore, reaffirms and re-alleges, as against the Respondent's Final Plan, each and every allegation and basis therefore in the Petitioner's Exceptions to the Preliminary Reapportionment Plan, and further, by reason of the availability of the Respondent's transcript of its proceedings on September 25, 1991, received by the Petitioner subsequent to October 9, 1991, Petitioner alleges that the Commission relied upon and utilized criteria

for the adoption of its plan which are not recognized nor supported by law.

WHEREFORE, your Petitioner prays that this Honorable Court review the Final Legislative Reapportionment Plan of the Legislative Reapportionment Commission, and that:

(1) This Court set aside the portion of the final Plan eliminating the 44th Senatorial District in Allegheny County, thereby preserving said District, and allow Petitioner to serve his full four-year term; and (2) eliminate one of the three odd-numbered Senatorial Districts in Allegheny County, allocating the population of said three districts in accordance with law, and designating the eliminated odd district to the eastern portion of Pennsylvania to the area identified as the new 44th Senatorial District in the Respondent's Final Plan.

Respectfully submitted,

By: /s/
Anthony J. Martin, Esquire
Counsel for Petitioner

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, personally appeared Anthony J. Martin, Esquire, counsel for Petitioner, who, being duly sworn according to law, deposes and says that the averments contained in the foregoing Petition for Review are true and correct to the best of his knowledge, information and belief.

/s/
Anthony J. Martin, Esquire

Sworn to and subscribed
before me this 4th day
of December, 1991.

/s/
Carol A. Richardson
Notary Public

Notarial Seal
Carol A. Richardson, Notary Public
Trafford Boro, Westmoreland County
My Commission Expires March 18, 1995
Member, Pennsylvania Association of
Notaries

CERTIFICATE OF SERVICE

I, Anthony J. Martin, Esquire, do hereby certify that a copy of the within Petition for Review has been served by first-class mail, postage prepaid on each of the following on this 9th day of December, 1991.

Commonwealth of Pennsylvania
Legislative Reapportionment Commission
612 North Office Building
Harrisburg, PA 15120
(To the following persons:)

Robert J. Cindrich, Esquire, Chairman
Honorable F. Joseph Loeper, Senate Majority Leader
Honorable Robert J. Mellow, Senate Minority Leader
Honorable H. William DeWeese, House Majority Leader
Honorable John M. Perzel, House Minority Policy Chairman
Honorable Allen Kukovich, Deputy Commissioner for Hon. H. William DeWeese

Honorable Ernest D. Preate, Jr.
Attorney General, Commonwealth of Pennsylvania
16th Floor
Strawberry Square
Harrisburg, PA 17120

/s/
Anthony J. Martin, Esquire
Counsel for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FRANK A PECORA, Senator, 44th Senatorial District,	:	
Petitioner,	:	
vs.	:	NO. 132 W.D. MISCELLANEOUS DOCKET 1991
PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT COMMISSION,	:	
Respondent.	:	

BRIEF OF PETITIONER

Appeal from the Final Plan of the Legislative Reapportionment Commission filed November 15, 1991

Anthony J. Martin, Esquire
Pa. I.D. No. 00091

MARTIN AND MARTIN, P.C.
Law Firm No. 179
2520 Mosside Boulevard
Monroe Complex, Building 1
Monroeville, PA 15146
(412) 372-3879

Counsel for Petitioner

. . . Petitioner does argue that these citizens will be disenfranchised for a period of two years, a time during which they will not have the ability to petition those invested with the power of government for the redress of their grievances in violation of Article I, Section 20, of the Pennsylvania Constitution.

Our state Constitution, by various sections of Article I, provides that all men "have certain inherent and indefeasible rights," among them the right to address by petition those invested with the powers of government, and that this right to petition "shall remain forever inviolate." Pa. Const. Art. I, §§1, 20, 25; Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 A.70, 72 (1921). The right to petition is a fundamental one, expressly recognized in the organic law of our

state as belonging to "citizens." Spayd v. Ringing Rock Lodge, supra. It is among the basic rights of human beings, "the Hallmarks of Western Civilization," that is not created by the constitution, but preserved by it. Western Pennsylvania Socialist Workers 1982 Campaign v. Connecticut General Life Insurance Co., 512 Pa. 23, 515 A.2d 1331, 1335 (1986); Spayd v. Ringing Rock Lodge, supra. ("The Constitution does not confer the right, but guarantees its free exercise, without let or hindrance from those in authority, at all times, under any and all circumstances"). The right to petition the Pennsylvania legislature is further guaranteed by the First and Fourteenth Amendments of the Federal Constitution. See Eastern Railroad Presidents' Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 138 (1961); Novosel v.

Nationwide Insurance Co., 721 F.2d 894, 899 n.7 (3d Cir. 1983); Richards Furniture Corp. v. Board of County Commissioners, 233 Md. 249, 196 A.2d 621, 627 (1964) ("The right of petition guaranteed by the First Amendment to the Federal Constitution has now been extended so as to prevent its denial by the State").

Similarly, the Court in the Colorado reapportionment case cited above stated:

> The Colorado Constitution, Art. V, Section 48, provides that following the federal census, "the senatorial and representative districts shall be established, revised, or altered, and the members of the senate and the house of representatives apportioned among them..." This constitutional mandate is not an empty maxim that districts are to be allocated a seat in the general assembly which may or may not be filled for a period of time. Rather, it is a result of either a resident holdover senator or the election of a new senator upon implementation of the reapportionment plan. A contrary construction, which would allow a district to re-

> main unrepresented for two years, would not only offend this provision of the constitution, but would also be inconsistent with the system of representative government contemplated in other provisions of our constitution. [Emphasis added.]

In further support of its position, the court enunciated the following cogent constitutional right:

> Colo. Const. Art. II, §24 guarantees the right of the people to petition "those invested with the powers of government for the redress of grievances." While that right does not limit citizens to petitioning only those representatives for whom they have voted, it is clear that legislators will be most responsive to citizens who place them in office and who, more importantly, reserve the power to remove a particular legislator from office during his term or return him to office by reelection. Full protection of this constitutional right requires that each district have an identifiable representative at all times.

647 P.2d at 199 (emphasis added).

It is also noted that this issue was addressed in McCall v. Legislative Assembly, 291 Or. 663, 634 P.2d 223, 235 (1981), which struck down a reapportionment plan requiring a district to go unrepresented for two years as violative of certain provisions of the Oregon Constitution, including the Oregon equivalent of the right to petition, Or. Const. Art. I, §26, which guarantees to citizens the freedom of "instructing their Representatives."

In addition, the Commission's indefensible action in renumbering the new district as 44, rather than 37, 43 or 45, thereby disenfranchising its electors, is violative of Article I, Sections 2 and 5 of the Pennsylvania Constitution. The Commission has interfered with the electors' free exercise of the right of suffrage, as well as interfering with the

political powers vested in the people to exercise their inalienable and indefeasible right to alter, reform, or abolish their government in such a manner they think proper.

The Colorado Supreme Court, in In Re: Reapportionment of the Colorado General Assembly, supra, states further:

> The residents of district 13 will not be able to recall the state senators for whom they originally voted because, as a result of the reapportionment, those senators are located in other districts and the residents of district 13 would not be entitled to vote for the successor of the recalled representative; nor will they be able to exercise the recall power over a new senator representing district 13, since, under the present reappportion[.]

* * *

II. THE ELIMINATION OF ONE OF THE THREE ODD-NUMBERED SENATORIAL DISTRICTS IN ALLEGHENY COUNTY, AND ALLOCATING THE REMOVED SENATORIAL DIS-

TRICT TO EASTERN PENNSYLVANIA, WHICH WOULD NOT INVOLVE THE MID-TERM ELIMINATION OF A SENATOR'S CONSTITUTIONAL TERM, IS IN ACCORDANCE WITH THE PENNSYLVANIA CONSTITUTION, THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, AND WITH THE PRIOR LEGISLATIVE REAPPORTIONMENT PLANS OF 1960, 1970 AND 1980.

II. A review of the relevant statistical data related to the Commission's recommendation pertaining to Allegheny County:

Districts represented by Democrats	Population Loss
Dist. 43 (Sen. Dawida)	26,687
Dist. 45 (Sen. Belan)	26,796
Dist. 38 (Sen. Bodack)	30,506
Dist. 42 (Sen. Scanlon)	17,943
Total Loss	101,632

Districts represented by Republicans	Population Loss
Dist. 37 (Sen. Fisher)	8,570
Dist. 40 (Sen. Hart)	2,297
Dist. 44 (Sen. Pecora)	13,776
Total Loss	24,643

Prior to the Reapportionment Commission study and recommendation, the population loss reflects a slightly higher than a 4 to 1 ratio loss of population in Senatorial districts represented by incumbent Democrats who have four (4) elected Senators as to the Republicans' three (3) elected Senators.

Let us now analyze the population losses in terms of odd districts and even numbered districts.

Odd Districts (Subject to Election--1992)

Dist.	Party Affil.	1990 Pop.	Loss
37	(Sen. Fisher-Rep.)	229,901	8,570

43	(Sen. Dawida-Dem.)	212,035	26,687
45	(Sen. Belan-Dem.)	210,735	26,796

Even Districts

38	(Sen. Bodack-Dem.)	208,321	30,506
40	(Sen. Hart-Rep.)	234,439	2,297
42	(Sen. Scanlon-Dem.)	218,170	17,943
44	(Sen. Pecora-Rep.)	223,153	13,776

2. An alternative plan which meets Constitutional and decisional law mandates:

The three Odd Districts up for election in 1992 have a total population of 662,689.

In order to minimize the impact of reapportionment as related to the con-

tinued incumbency of the even-numbered districts to the year 1994, and yet address the "one vote/one person" rule requirement, it is suggested that the following proposal is fair and equitable as required by the Equal Protection Clause of the United States Constitution and decisional law:

> The reduction of the odd-numbered districts from three to two allows 532,689 people to preserve their right to elect a State Senator in 1992. The remaining 130,000 current residents would be placed in the adjoining even-numbered districts, taking into consideration geographic, economic, social and cultural factors, as well as such other factors discussed in applicable case law. Those 130,000 people, so realigned, would have the

right to vote for a Senator two years (1994) after the current right to vote (1992).

The two odd districts would then each have 264,244 people. The allocation of the 130,000 to the even Senatorial districts is suggested as follows:

Dist. 38 (Sen. Bodack) D
208,321 + 45,000 = 253,321

Dist. 40 (Sen. Hart) R
234,439 + 20,000 = 254,439

Dist. 42 (Sen. Scanlon) D
218,170 + 35,000 = 253,170

Dist. 44 (Sen. Pecora) R
223,153 + 30,000 = 253,153

The variation of the average even-numbered districts to the revised two odd-numbered districts is less than five percent (5%), which meets the "one vote/ one person" criteria when taking into consideration all other fair and equitable factors.

The elimination of one odd district can result in both remaining odd districts electing two (2) Democrats, or one Democrat and one Republican, with little or no possibility of two Republicans. If two Democrats are elected, then the ratio will be 2 Republicans - 4 Democrats; if one Republican and one Democrat, then the ratio would be 3 Democrats - 3 Republicans.

* * *

. . . each of the Constitutions of our 50 States. Furthermore, the decisions of this Court, and of the Supreme Court of the United States, have addressed the concept of fairness or justice from their inception.

A fair trial and the elements of a fair society committed to justice and freedom have been addressed by our legal system, which has established appropriate

and unalterable concepts of fairness and justice.

The law relating to the appropriate standards to be utilized in legislative reapportionment activities establish the criteria of fairness and the fundamental factors which shall govern legislative reapportionment activities and the implementation of reapportionment plans.

In Abate v. Mundt, 403 U.S. 182 (1971), and in Gaffney v. Cummings, 412 U.S. 735 (1973), the Supreme Court noted that a reapportionment plan also violates the Fourteenth Amendment in that a plan is drawn with a built-in purposely created bias favoring political interest.

In Kluhr v. Williams, 313 F.Supp. 148 (DC Ariz. 1970), the District Court rejected a redistricting plan which used incumbency and party strength as prevalent factors in the reapportionment.

In Kurcher v. Duggett, 462 U.S. 725 (1983), the Supreme Court stated:

> "Adopting any standard other than population equality, using the best census data available, would subtly erode the Constitution's ideal of equal representation. If state legislators knew that a certain deminimis level of population differences was acceptable, they would doubtless strive to achieve that level rather than equality."

As Justice Musmanno noted in his dissent in Butcher, supra, in discussing the numbering of senatorial districts, "It has been said that gerrymandering can be accomplished sometimes as effectively by numbers as well as by formulation of strangely-shaped election districts."

It is evident from the record of the public hearings by the LRC that the deciding vote on eliminating Petitioner's 44th Senatorial District, in mid-term, was premised solely upon party registration factors conceptualized by Chairman

Cindrich, which totally ignored the standards of fairness and equality recognized by the Supreme Court. As Justice Musmanno noted, Chairman Cindrich was engaged in numerical gerrymandering which was designed to establish a political "arrangement" which, in his judgment, was designed to meet party registration census and not the "one vote/one person" Constitutional standard.

Respondent may place reliance upon Davis v. Bandemer, 478 U.S. 109 (1986), in its attempt to deny Petitioner's assertion that the elimination of his district amounted to an unconstitutional political gerrymandering.

In Davis, supra. [sic] the Indiana state legislature, both houses of which had Republican majorities, and Indiana's Republican Governor approved a legislative district reapportionment plan which

was allegedly designed to maintain Republican control of the legislature. The plan was recommended by a conference committee consisting entirely of Republicans, and Democrats were excluded from the map-making process and had only 40 hours to examine and respond to the plan from the time it was revealed until its passage by the legislature. A number of Indiana Democrats filed suit against various state officials in Indiana federal district court, alleging that the reapportionment plan was intended to and did violate their right, as Democrats, to equal protection under the Fourteenth Amendment. Before the case went to trial, elections were held under the newly approved reapportionment plan in which Democratic House candidates won 51.9% of the statewide vote but only 43 of the 100 seats, while Democratic Senate candidates

won 53.1% of the statewide vote and 13 of 25 seats up for election. A three-judge panel of the district court declared the reapportionment plan unconstitutional under the equal protection clause.

On appeal, the Supreme Court reversed. The Court, by a vote of 6 to 3, held that a political gerrymandering claim, alleging that a reapportionment plan for state legislative districts violates the rights of members of a political party to the equal protection of the laws under the Fourteenth Amendment because the district lines were drawn with the intention and effect of disadvantaging members of that party, is not a nonjusticiable political question, but presents a justiciable controversy. 478 U.S. at 124-25. This Court majority, however, split over the question of whether the plaintiffs had in fact pre-

sented a viable political gerrymandering claim.

A plurality of four Justices (Justices White, Brennan, Marshall, and Blackman) concluded that the plaintiffs in a political gerrymandering case are "required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect." Id. at 127. Moreover, according to the plurality, "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." Id. at 132. In other words, "a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters

of a fair chance to influence the political process." Id. at 133.

The plurality, therefore, rejected the District Court's "apparent holding that any interference with an opportunity to elect a representative of one's choice would be sufficient to allege or make out an equal protection violation, unless justified by some acceptable state interest that the State would be required to demonstrate." Id. (emphasis in original). It further reasoned that relying on a single election to prove unconstitutional discrimination is unsatisfactory," saying:

> The District Court observed, and the parties do not disagree, that Indiana is a swing State. Voters sometimes prefer Democratic candidates, and sometimes Republican. The District Court did not find that because of the 1981 Act the Democrats could not in one of the next few elections secure a sufficient vote to take control of the assembly....The appel-

> lants argue here, without a persuasive response from appellees, that had the Democratic candidates received an additional few percentage points of the votes cast statewide, they would have obtained a majority of the seats in both houses. Nor was there any finding that the 1981 reapportionment would consign the Democrats to a minority status in the Assembly throughout the 1980's or that the Democrats would have no hope of doing any better in the reapportionment that would occur after the 1990 census. Without findings of this nature, the District Court erred in concluding that the 1981 Act violated the Equal Protection Clause.

Id, at 135-26.

Two other justices (Justices Powell and Stevens), in Powell's dissenting opinion, concluded that the merits of a political gerrymandering claim turn on whether the boundaries of voting districts have been distorted deliberately and arbitrarily to achieve illegitimate ends, which must be determined by reference to a number of factors, including

the configuration of the districts, the observance of political subdivision lines, the nature of the procedures by which the apportionment law was adopted, and legislative history reflecting contemporaneous legislative goals, including any evidence of solely partisan motivation. Id. at 135 ("the record unequivocally demonstrates that in 1981 the Republican-dominated General Assembly deliberately sought to design a redistricting plan under which members of the Democratic party would be deprived of a fair opportunity to win control of the General Assembly at least until 1991, the date of the next redistricting"). Justice Powell further stated that "[t]he District Court found, and I agree, that appellants failed to justify the discriminatory impact of the plan by showing that the plan had a rational basis in

permissible neutral criteria." Id. at 184.

In the instant case, unlike Davis, supra., [sic] Petitioner does not attack the constitutionality of the entire plan, but correlates the motivational factors clearly announced by the Chairman of the LRC upon the Petitioner which resulted in the elimination of an even-numbered district, at mid-term, where the district's majority of voters, although Democratic, elected a Republican to the State Senate for four Senatorial terms.

As the plurality opinion of the Supreme Court noted, the citizens of the 44th Senatorial district will be subjected to "unconstitutional discrimination (which) occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a

group of voters' influence on the political process as a whole."

Both the criteria established by the plurality, and certainly the opinion and rationale of Justice Powell in his dissenting opinion in Davis, supra., [sic] sustain Petitioner's claim under the Pennsylvania Constitution, Pa. Const. Art. I, §1, and equally sustainable under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The statements and intent of Chairman Cindrich, as reflected in the records of the LRC hearings, resulted in a majority vote approving the final Plan, clearly establishing an invidious intent or a nefarious ulterior motive.

* * *

LEGISLATIVE DATA PROCESSING CENTER

COMPOSITE LISTING

OF

STATE SENATE DISTRICTS

DISTRICT NUMBER	DESCRIPTION
Dist. 01	PHILADELPHIA County. Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01, 02, 05, 08, 14, 15 [PART, Divisions 01, 02, 03, 04, 05, 06, 08, 09, 12, 13, 14, 15, 16, 17, 18, and 19], 18 [PART, Divisions 01, 02, 04, 05, 06, 07, 09, 10, 11, and 12], 25, 26 [PART, Divisions 09, 10, 11, 12, 16, 17, 19, 21 and 22], 31, 33·[PART, Divisions 15, 17, 18, 19, 20, 21, 22, 23 and 24], 36 [PART, Divisions 01, 02, 09,

10, 11, 29, 31, 34, 35, 36, 37, 38, 39, 40 and 41] and 39).
Total population: 236,135

Dist. 02 PHILADELPHIA County.
Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 07, 18 [PART, Divisions 03, 08, 13, 14, 15, 16 and 17], 19, 20 [PART, Divisions 01, 02, 04, and 08], 23 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23], 33 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14 and 16], 37 [PART, Divisions 13, 15, 16, 18, 19, 20, and 21], 42 [PART, Divisions 02, 03, 04, 06, 07, 16, 17, 20, 21, 24 and 25], 43 [PART, Divisions

02, 03, 04, 05, 06, 07, 08, 11, 12, 13, 16, 17, 18, 19, 20, 21 and 25], 49 [PART, Divisions 01, 09 and 13], 53 [PART, Divisions 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22], 54, 55, 56 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 32, 33, 34, 36, 37, 39, and 40], 61 [PART, Division 01] and 62).

Total population 236,743

Dist. 03 PHILADELPHIA County.

Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 11 [PART, Divisions 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20], 13

[PART, Divisions 01, 02, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25], 15 [PART, Divisions 07, 10 and 11], 16, 20 [PART, Divisions 03, 05, 06, 07, 09 and 10], 23 [PART, Divisions 10, 11 and 12], 29, 32, 35, 37 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 14 and 17], 42 [PART, Divisions 01, 05, 08, 09, 10, 11, 12, 13, 14, 15, 18, 19, 22 and 23], 43 [PART, Divisions 01, 09, 10, 14, 15, 22, 23 and 24], 47, 49 [PART, Divisions 02, 03, 04, 05, 06, 07, 08, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25], 53 [PART, Divisions 01, 02, 03, 04, 05 and 23] and 61 [PART,

Divisions 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28]).

Total population: 236,446

Dist. 04 MONTGOMERY and PHILADELPHIA Counties.

Part of MONTGOMERY County consisting of the TOWNSHIP of Cheltenham and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 09, 10, 12, 17, 21 [PART, Divisions 03, 24, 32, 34, 38, 39, 43 and 44], 22, 50, 59 and 63).

Total population: 236,080

Dist. 05 MONTGOMERY and PHILADELPHIA Counties.

Part of MONTGOMERY County consisting of the TOWNSHIP of Low-

er Moreland and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 41, 45, 56 [PART, Divisions 23, 24, 25, 27, 28, 29, 30, 31, 35, 38 and 41], 57, 58, 64, 65 and 66).

Total population: 238,290

Dist. 06 BUCKS County.

Part of BUCKS County consisting of the TOWNSHIPS of Bensalem, Bristol, Falls, Lower Southampton and Middletown and the BOROUGHS of Bristol, Hulmeville, Langhorne Manor, Morrisville, Penndel and Tullytown.

Total population: 238,772

Dist. 07 PHILADELPHIA County.

Part of PHILADELPHIA County consisting of the CITY of Phil-

adelphia (PART, Wards 04, 0[illegible] 11 [PART, Division 02], 13 [PART, Divisions 03, 04 and 05], 21 [PART, Divisions 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 35, 36, 37, 40, 41, 42 and 45], 24, 27 [PART, Divisions 01, 02, 04, 05, 06, 07, 09, 10, 12, 13, 14, 15, 16, 17 and 23], 28, 34, 38, 44, 52 and 60 [PART, Divisions 01, 02, 03, 04, 05, 12 and 23]).

Total population: 235,402

Dist. 08 DELAWARE and PHILADELPHIA Counties.

Part of DELAWARE County consisting of the BOROUGHS of Darby and Yeadon and Part of

PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 03, 26 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 13, 14, 15, 18, 20, 23 and 24], 27 [PART, Divisions 03, 08, 11, 18, 19, 20, 21 and 22], 30, 36 [PART, Divisions 03, 04, 05, 06, 07, 08, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32 and 33], 40, 46, 48, 51 and 60 [PART, Divisions 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22]).

Total population: 236,292

Dist. 09 CHESTER and DELAWARE Counties. Part of CHESTER County consisting of the TOWNSHIPS of Birmingham, East Marlborough, Franklin, Kennett, London Brit-

ain, New Garden and Pennsbury and the BOROUGH of Kennett Square and Part of DELAWARE County consisting of the CITY of Chester and the TOWNSHIPS of Aston, Bethel, Birmingham, Chester, Concord, Lower Chichester, Middletown, Nether Providence, Ridley, Thornbury, Tinicum and Upper Chichester and the BOROUGHS of Brookhaven, Chester Heights, Eddystone, Marcus Hook, Media, Parkside, Prospect Park, Ridley Park, Rose Valley, Trainer and Upland.

Total population: 238,970

Dist. 10 BUCKS County.

Part of BUCKS County consisting of the TOWNSHIPS of Bedminster, Bridgeton, Buckingham, Doyles-

town, Durham, East Rockhill, Haycock, Hilltown, Lower Makefield, Milford, Newtown, Nockamixon, Northampton, Plumstead, Richland, Solebury, Springfield, Tinicum, Upper Makefield, Upper Southampton, West Rockhill and Wrightstown and the BOROUGHS of Doylestown, Dublin, Langhorne, New Hope, Newtown, Perkasie, Quakertown, Richlandtown, Riegelsville, Sellersville, Silverdale, Telford (Bucks County Portion), Trumbauersville and Yardley.
Total population: 236,654

Dist. 11 BERKS County.
Part of BERKS County consisting of the CITY of Reading and the TOWNSHIPS of Alsace, Bern, Centre, Colebrookdale, Cumru,

Earl, Exeter, Greenwich, Longswamp, Lower Alsace, Lower Heidelberg, Maidencreek, Maxatawny, Muhlenberg, Oley, Ontelaunee, Penn, Perry, Pike, Richmond, Rockland, Ruscombmanor and Washington and the BOROUGHS of Bally, Bechtelsville, Bernville, Birdsboro, Boyertown, Centerport, Fleetwood, Kenhorst, Kutztown, Laureldale, Leesport, Lenhartsville, Lyons, Mohnton, Mt. Penn, Shillington, Shoemakersville, St. Lawrence, Temple, Topton and West Reading.

Total population: 238,344

Dist. 12 BUCKS and MONTGOMERY Counties. Part of BUCKS County consisting of the TOWNSHIPS of New Britain, Warminster, Warrington

and Warwick and the BOROUGHS of Chalfont, Ivyland and New Britain and Part of MONTGOMERY County consisting of the TOWNSHIPS of Abington, Horsham, Lower Gwynedd, Montgomery, Upper Dublin and Upper Moreland and the BOROUGHS of Ambler, Bryn Athyn, Hatboro, Jenkintown and Rockledge.

Total population: 237,769

Dist. 13 LANCASTER and YORK Counties. Part of LANCASTER County consisting of the CITY of Lancaster and the TOWNSHIPS of Bart, Colerain, Conestoga, Drumore, East Drumore, Eden, Fulton, Lancaster, Little Britain, Manheim, Manor, Martic, Pequea, Providence, Sadsbury, Strasburg and West Lampeter and the BOR-

OUGHS of Christiana, East Petersburg, Millersville, Mountville, Quarryville and Strasburg and Part of YORK County consisting of the TOWNSHIPS of Chanceford, East Manchester, Hellam, Lower Chanceford, Lower Windsor and Springettsbury and the BOROUGHS of East Prospect, Felton, Hallam, Manchester, Mt. Wolf, Wrightsville and Yorkana. Total population: 237,361

Dist. 14 LUZERNE County.

Part of LUZERNE County consisting of the CITIES of Hazleton, Nanticoke, Pittston and Wilkes-Barre and the TOWNSHIPS of Bear Creek, Black Creek, Buck, Butler, Conyngham, Dennison, Dorrance, Exeter, Fairview, Foster, Hanover, Hazle, Jenkins,

Newport, Pittston, Plains, Rice, Slocum, Sugarloaf, Wilkes-Barre and Wright and the BOROUGHS of Ashley, Conyngham, Edwardsville, Exeter, Freeland, Hughestown, Jeddo, Laflin, Larksville, Laurel Run, Luzerne, Nuangola, Penn Lake Park, Sugar Notch, Swoyersville, Warrior Run, West Hazleton, West Pittston, West Wyoming, White Haven, Wyoming and Yatesville.

Total population: 235,506

Dist. 15 DAUPHIN County.

All of DAUPHIN County.

Total population: 237,813

Dist. 16 LEHIGH and NORTHAMPTON Counties.

Part of LEHIGH County consisting of the CITIES of Allentown

and Bethlehem (Lehigh County Portion) and the TOWNSHIPS of Hanover, Salisbury, Upper Saucon and Whitehall and the BOROUGHS of Catasauqua, Coppersburg, Coplay, Fountain Hill and Slatington and Part of NORTHAMPTON County consisting of the TOWNSHIPS of Allen, East Allen, Hanover, Lehigh and Lower Nazareth and the BOROUGHS of Bath, North Catasauqua, Northampton and Walnutport.

Total population: 238,148

Dist. 17 DELAWARE and MONTGOMERY Counties.

Part of DELAWARE County consisting of the TOWNSHIPS of Haverford and Radnor and Part of MONTGOMERY County consisting of the TOWNSHIPS of Lower Mer-

ion, Lower Providence, Plymouth, Upper Merion and West Norriton and the BOROUGHS of Bridgeport, Collegeville, Conshohocken, Narberth, Trappe and West Conshohocken.

Total population: 237,064

Dist. 18 MONROE and NORTHAMPTON Counties.

Part of MONROE County consisting of the TOWNSHIPS of Eldred, Hamilton, Polk, Ross and Smithfield and the BOROUGHS of Delaware Water Gap, East Stroudsburg and Stroudsburg and Part of NORTHAMPTON County consisting of the CITIES of Bethlehem (Northampton County Portion) and Easton and the TOWNSHIPS of Bethlehem, Bushkill, Forks, Lower Mt. Bethel, Lower Saucon,

Moore, Palmer, Plainfield, Upper Mt. Bethel, Upper Nazareth, Washington and Williams and the BOROUGHS of Bangor, Chapman, East Bangor, Freemansburg, Glendon, Hellertown, Nazareth, Pen Argyl, Portland, Roseto, Stockertown, Tatamy, West Easton, Wilson and Wind Gap.
Total population: 239,569

Dist. 19 CHESTER County.
Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Caln, East Bradford, East Caln, East Fallowfield, East Goshen, East Nottingham, East Whiteland, Easttown, Elk, Highland, London Grove, Londonderry, Lower Oxford, New London, Newlin, Penn, Pocopson, Sadsbury, Thornbury,

Tredyffrin, Upper Oxford, Valley, West Bradford, West Fallowfield, West Goshen, West Marlborough, West Nottingham, West Sadsbury, West Whiteland, Westtown and Willistown and the BOROUGHS of Atglen, Avondale, Downingtown, Malvern, Modena, Oxford, Parkesburg, South Coatesville, West Chester and West Grove.

Total population: 239,605

Dist. 20 LUZERNE, MONROE, PIKE, SUSQUEHANNA, WAYNE and WYOMING Counties.

Part of LUZERNE County consisting of the TOWNSHIPS of Dallas, Fairmount, Franklin, Hollenback, Hunlock, Huntington, Jackson, Kingston, Lake, Lehman, Nescopeck, Plymouth, Ross,

Salem and Union and the BOR-
OUGHS of Courtdale, Dallas,
Forty Fort, Harveys Lake,
Kingston, Nescopeck, New Colum-
bus, Plymouth, Pringle and
Shickshinny; Part of MONROE
County consisting of the TOWN-
SHIPS of Middle Smithfield,
Paradise, Price and Stroud; All
of PIKE County; All of SUSQUE-
HANNA County; All of WAYNE
County and All of WYOMING Coun-
ty.

Total population: 239,125

Dist. 21 BUTLER, CLARION, LAWRENCE and
VENANGO Counties.

Part of BUTLER County consist-
ing of the CITY of Butler and
the TOWNSHIPS of Allegheny,
Brady, Buffalo, Butler, Center,
Cherry, Clay, Clearfield, Clin-

ton, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jackson, Jefferson, Lancaster, Marion, Mercer, Middlesex, Muddycreek, Oakland, Parker, Penn, Slippery Rock, Summitt, Venango, Washington, Winfield and Worth and the BOROUGHS of Bruin, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harmony, Harrisville, Karns City, Petrolia, Portersville, Prospect, Saxonburg, Slippery Rock, West Liberty, West Sunbury and Zelienople; All of CLARION County; Part of LAWRENCE County consisting of the TOWNSHIPS of Hickory, Neshannock, Perry, Plain Grove, Scott, Shenango, Slippery Rock,

Washington and Wilmington and the BOROUGHS of New Wilmington and Volant and Part of VENANGO County consisting of the CITY of Franklin and the TOWNSHIPS of Canal, Clinton, Cranberry, Frenchcreek, Irwin, Jackson, Mineral, Pinegrove, Richland, Rockland, Sandycreek, Scrubgrass and Victory and the BOROUGHS of Barkeyville, Clintonville, Cooperstown, Emlenton, Polk and Utica.

Total population: 235,335

Dist. 22 LACKAWANNA, LUZERNE and MONROE Counties.

All of LACKAWANNA County; Part of LUZERNE County consisting of the BOROUGHS of Avoca, Dupont and Duryea and Part of MONROE

County consisting of the TOWNSHIPS of Barrett and Coolbaugh.

Total population: 239,761

Dist. 23 BRADFORD, LYCOMING, SULLIVAN, TIOGA and UNION Counties.

All of BRADFORD County; All of LYCOMING County; All of SULLIVAN County; All of TIOGA County and Part of UNION County consisting of the TOWNSHIPS of Buffalo, Gregg, Kelly and White Deer.

Total population: 239,417

Dist. 24 MONTGOMERY County.

Part of MONTGOMERY County consisting of the TOWNSHIPS of East Norriton, Franconia, Hatfield, Limerick, Lower Frederick, Lower Salford, Marlborough, Perkiomen, Salford, Skippack, Springfield, Towamencin,

Upper Frederick, Upper Gwynedd, Upper Providence, Upper Salford, Whitemarsh, Whitpain and Worcester and the BOROUGHS of Green Lane, Hatfield, Lansdale, Norristown, North Wales, Royersford, Schwenksville, Souderton and Telford (Montgomery County Portion).

Total population: 238,124

Dist. 25 CAMERON, CLEARFIELD, ELK, ERIE, FOREST, JEFFERSON, MCKEAN, POTTER, VENANGO and WARREN Counties.

All of CAMERON County; Part of CLEARFIELD County consisting of the CITY of Dubois and the TOWNSHIPS of Bell, Bloom, Brady, Huston, Penn, Sandy and Union and the BOROUGHS of Grampian, Mahaffey and Troutville;

All of ELK County; Part of ERIE County consisting of the CITY of Corry; All of FOREST County; Part of JEFFERSON County consisting of the TOWNSHIPS of Barnett, Beaver, Clover, Eldred, Heath, Knox, Oliver, Pine Creek, Polk, Rose, Snyder, Union, Warsaw and Washington and the BOROUGHS of Brockway, Brookville, Corsica, Falls Creek (Jefferson County Portion) and Summerville; All of MCKEAN County; All of POTTER County; Part of VENANGO County consisting of the CITY of Oil City and the TOWNSHIPS of Allegheny, Cherrytree, Cornplanter, Oakland, Oil Creek, Plum and President and the BOROUGHS of Pleasantville, Rouseville

and Sugar Creek and All of WARREN County.

Total population: 237,406

Dist. 26 DELAWARE County.

Part of DELAWARE County consisting of the TOWNSHIPS of Darby, Edgemont, Marple, Newtown, Springfield, Upper Darby and Upper Providence and the BOROUGHS of Aldan, Clifton Heights, Collingdale, Colwyn, East Lansdowne, Folcroft, Glenolden, Lansdowne, Millbourne, Morton, Norwood, Rutledge, Sharon Hill and Swarthmore.

Total population: 238,475

Dist. 27 COLUMBIA, MONTOUR, NORTHUMBERLAND, SNYDER and UNION Counties.

All of COLUMBIA County; All of MONTOUR County; All of NOR-

THUMBERLAND County; All of SNY-
DER County and Part of UNION
County consisting of the TOWN-
SHIPS of East Buffalo, Hartley,
Lewis, Limestone, Union and
West Buffalo and the BOROUGHS
of Hartleton, Lewisburg, Mif-
flinburg and New Berlin.
Total population: 238,054

Dist. 28 YORK County.
Part of YORK County consisting
of the CITY of York and the
TOWNSHIPS of Codorus, Dover,
East Hopewell, Fawn, Heidel-
berg, Hopewell, Jackson, Man-
chester, Manheim, North Codo-
rus, North Hopewell, Paradise,
Peach Bottom, Penn, Shrewsbury,
Spring Garden, Springfield,
West Manchester, West Manheim,
Windsor and York and the BOR-

OUGHS of Cross Roads, Dallastown, Delta, Dover, Fawn Grove, Glen Rock, Hanover, Jacobus, Jefferson, Longanville, New Freedom, New Salem, North York, Railroad, Red Lion, Seven Valleys, Shrewsbury, Spring Grove, Stewartstown, West York, Windsor, Winterstown and Yoe.

Total population: 236,291

Dist. 29 CARBON, MONROE and SCHUYLKILL Counties.

All of CARBON County; Part of MONROE County consisting of the TOWNSHIPS of Chestnuthill, Jackson, Pocono, Tobyhanna and Tunkhannock and the BOROUGH of Mt. Pocono and All of SCHUYLKILL County.

Total population: 237,688

Dist. 30 BEDFORD, BLAIR, FULTON and HUNTINGDON Counties.

All of BEDFORD County; All of BLAIR County; All of FULTON County and All of HUNTINGDON County.

Total population: 236,462

Dist. 31 CUMBERLAND, PERRY and YORK Counties.

Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, East Pennsboro, Hampden, Hopewell, Lower Allen, Lower Frankford, Lower Mifflin, Middlesex, North Middleton, North Newton, Penn, Shippensburg, Silver Spring, South Middleton, South Newton, Southampton, Upper Frankford, Upper Mifflin and West Pennsboro and the BOROUGHS of Camp

Hill, Carlisle, Lemoyne, Mechanicsburg, Mt. Holly Springs, New Cumberland, Newburg, Newville, Shippensburg (Cumberland County Portion), Shiremanstown, West Fairview and Wormleysburg; Part of PERRY County consisting of the TOWNSHIPS of Carroll, Centre, Jackson, Juniata, Miller, North East Madison, Penn, Rye, Saville, South West Madison, Spring, Toboyne, Tyrone and Wheatfield and the BOROUGHS of Blain, Bloomfield, Duncannon, Landisburg and Marysville and Part of YORK County consisting of the TOWNSHIPS of Conewago, Fairview and Newberry and the BOROUGHS of Goldsboro, Lewisberry and York Haven.
Total population: 238,487

Dist. 32 FAYETTE, SOMERSET, WASHINGTON and WESTMORELAND Counties. All of FAYETTE County; Part of SOMERSET County consisting of the TOWNSHIPS of Addison, Allegheny, Black, Brothers Valley, Conemaugh, Elk Lick, Fairhope, Greenville, Jefferson, Jenner, Larimer, Lincoln, Lower Turkeyfoot, Middlecreek, Milford, Northampton, Quemahoning, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the BOROUGHS of Addison, Berlin, Boswell, Callimont, Casselman, Confluence, Garrett, Indian Lake, Jennerstown, Meyersdale, New Baltimore, New Centerville, Rockwood, Salisbury, Seven Springs, Shanksville, Somerset,

Stoystown, Ursina and Wellersburg; Part of WASHINGTON County consisting of the BOROUGHS of Allenport, California, Charleroi, Coal Center, Dunlevy, Elco, Long Beach, Roscoe, Speers and Stockdale and Part of WESTMORELAND County consisting of the TOWNSHIP of Ligonier and the BOROUGHS of Laurel Mountain, Ligonier and Scottdale.

Total population: 237,798

Dist. 33 ADAMS, CUMBERLAND, FRANKLIN and YORK Counties.

All of ADAMS County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Monroe and Upper Allen; All of FRANKLIN County and Part of YORK County consisting of the TOWNSHIPS of

Carroll, Franklin, Monaghan, Warrington and Washington and the BOROUGHS of Dillsburg, Franklintown and Wellsville.
Total population: 236,487

Dist. 34 CENTRE, CLINTON, JUNIATA, MIFFLIN and PERRY Counties.
All of CENTRE County; All of CLINTON County; All of JUNIATA County; All of MIFFLIN County and Part of PERRY County consisting of the TOWNSHIPS of Buffalo, Greenwood, Howe, Liverpool, Oliver, Tuscarora and Watts and the BOROUGHS of Liverpool, Millerstown, New Buffalo and Newport.
Total population: 238,705

Dist. 35 CAMBRIA, CLEARFIELD, SOMERSET and WESTMORELAND Counties.

All of CAMBRIA County; Part of CLEARFIELD County consisting of the TOWNSHIPS of Beccaria, Bigler, Boggs, Bradford, Burnside, Chest, Cooper, Covington, Decatur, Ferguson, Girard, Goshen, Graham, Greenwood, Gulich, Jordan, Karthaus, Knox, Lawrence, Morris, Pike, Pine and Woodward and the BOROUGHS of Brisbin, Burnside, Chester Hill, Clearfield, Coalport, Curwensville, Glen Hope, Houtzdale, Irvona, Lumber City, New Washington, Newburg, Osceola, Ramey, Wallaceton and Westover; Part of SOMERSET County consisting of the TOWNSHIPS of Ogle, Paint and Shade and the BOROUGHS of Benson, Central City, Hooversville, Paint and

Windber and Part of WESTMORELAND County consisting of the TOWNSHIPS of Fairfield and St. Clair and the BOROUGHS of Bolivar, New Florence and Seward. Total population: 237,025

Dist. 36 LANCASTER County.

Part of LANCASTER County consisting of the TOWNSHIPS of Brecknock, Caernarvon, Clay, Conoy, Earl, East Cocalico, East Donegal, East Earl, East Hempfield, East Lampeter, Elizabeth, Ephrata, Leacock, Mt. Joy, Paradise, Penn, Rapho, Salisbury, Upper Leacock, Warwick, West Cocalico, West Donegal, West Earl and West Hempfield and the BOROUGHS of Adamstown (Lancaster County Portion), Akron, Columbia, Den-

ver, Elizabethtown, Ephrata, Lititz, Manheim, Marietta, Mt. Joy, New Holland and Terre Hill.

Total population: 238,640

Dist. 37 ALLEGHENY and WASHINGTON Counties.

Part of ALLEGHENY County consisting of the TOWNSHIPS of Baldwin, Collier, Mt. Lebanon, Scott, South Fayette, South Park and Upper St. Clair and the BOROUGHS of Bethel Park, Brentwood, Bridgeville, Carnegie, Castle Shannon, Dormont, Green Tree, Heidelberg, Jefferson, Oakdale, Pleasant Hills, Rossyln Farms, Thornburg and Whitehall and Part of WASHINGTON County consisting of the TOWNSHIP of Peters.

Total population: 236,558

Dist. 38 ALLEGHENY County.

Part of ALLEGHENY County consisting of the CITY of Pittsburg (PART, Wards 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 22, 23, 24, 25 and 26) and the TOWNSHIPS of O Hara and Reserve and the BOROUGHS of Aspinwall, Blawnox, Edgewood, Etna, Fox Chapel, Millvale, Oakmont, Sharpsburg, Swissvale, Verona and Wilkinsburg.

Total population: 237,362

Dist. 39 WESTMORELAND County.

Part of WESTMORELAND County consisting of the CITIES of Greensburg and Jeannette and the TOWNSHIPS of Cook, Derry, Donegal, East Huntingdon, Hempfield, Loyalhanna, Mt. Pleas-

ant, North Huntingdon, Penn, Rostraver, South Huntingdon and Unity and the BOROUGHS of Adamsburg, Arona, Derry, Donegal, Hunker, Irwin, Latrobe, Manor, Mt. Pleasant, New Alexandria, New Stanton, North Belle Vernon, North Irwin, Penn, Smithton, South Greensburg, Southwest Greensburg, West Newton, Youngstown and Youngwood.

Total population: 236,743

Dist. 40 ALLEGHENY, BUTLER and WESTMORELAND Counties.

Part of ALLEGHENY County consisting of the TOWNSHIPS of East Deer, Fawn, Frazer, Hampton, Harmar, Harrison, Indiana, Marshall, Mc Candless, Pine, Richland, Ross, Shaler, Spring-

dale and West Deer and the BOROUGHS of Brackenridge, Bradford Woods, Cheswick, Franklin Park, Tarentum and West View; Part of BUTLER County consisting of the Townships of Adams and Cranberry and the BOROUGHS of Callery, Mars, Seven Fields and Valencia and Part of WESTMORELAND County consisting of the CITIES of Arnold and New Kensington.

Total population: 239,147

Dist. 41 ARMSTRONG, INDIANA, JEFFERSON and WESTMORELAND Counties.

All of ARMSTRONG County; All of INDIANA County; Part of JEFFERSON County consisting of the TOWNSHIPS of Bell, Gaskill, Henderson, Mc Calmont, Perry, Porter, Ringgold, Winslow and

Young and the BOROUGHS of Big Run, Punxsutawney, Reynoldsville, Sykesville, Timblin and Worthville and Part of WESTMORELAND County consisting of the CITY of Lower Burrell and the TOWNSHIPS of Allegheny, Bell, Salem, Upper Burrell and Washington and the BOROUGHS of Avonmore, East Vandergrift, Hyde Park, Oklahoma, Vandergrift and West Leechburg.
Total population: 237,423

Dist. 42 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITY of Pittsburgh (PART, Wards 01, 18, 19, 20, 21, 27, 28, 30 and 32) and the TOWNSHIPS of Aleppo, Crescent, Findlay, Kennedy, Kilbuck, Leet, Moon, Neville,

North Fayette, Ohio, Robinson and Stowe and the BOROUGHS of Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Coraopolis, Crafton, Edgeworth, Emsworth, Glenfield, Haysville, Ingram, Leetsdale, Mc Donald (Allegheny County Portion), Mc Kees Rocks, Osborne, Pennsbury Village, Sewickley, Sewickley Heights and Sewickley Hills.
Total population: 238,509

Dist. 43 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITY of Pittsburgh (PART, Wards 07, 14, 15, 16, 17, 29 and 31) and the TOWNSHIPS of Penn Hills and Wilkins and the BOROUGHS of Baldwin, Braddock, Braddock Hills, Chalfant, Churchill,

Forest Hills, Homestead, Mt. Oliver, Munhall, North Braddock, Rankin, West Homestead and Whitaker.

Total population: 237,107

Dist. 44 BERKS, CHESTER, LEHIGH and MONTGOMERY Counties.

Part of BERKS County consisting of the TOWNSHIPS of Amity, Brecknock, Caernarvon, District, Douglass, Hereford, Robeson and Union; Part of CHESTER County consisting of the TOWNSHIPS of Charleston, East Brandywine, East Coventry, East Nantmeal, East Vincent, Honeybrook, North Coventry, Schuylkill, South Coventry, Upper Uwchlan, Uwchlan, Wallace, Warwick, West Brandywine, West Caln, West Nantmeal, West

Pikeland and West Vincent and the BOROUGHS of East Pikeland, Elverson, Honey Brook, Phoenixville and Spring City; Part of LEHIGH County consisting of the TOWNSHIPS of Lower Macungie, Lower Milford and Upper Milford and the BOROUGHS of Alburtis, Emmaus and Macungie and Part of MONTGOMERY County consisting of the TOWNSHIPS of Douglass, Lower Pottsgrove, New Hanover, Upper Hanover, Upper Pottsgrove and West Pottsgrove and the BOROUGHS of East Greenville, Pennsburg, Pottstown and Red Hill.

Total population: 239,075

Dist. 45 ALLEGHENY and WESTMORELAND Counties.

Part of ALLEGHENY County consisting of the CITIES of Clairton, Duquesne and Mc Keesport and the TOWNSHIPS of Elizabeth, Forward, North Versailles and South Versailles and the BOROUGHS of Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Liberty, Lincoln, Monroeville, Pitcairn, Plum, Port Vue, Springdale, Trafford (Allegheny County Portion), Turtle Creek, Versailles, Wall, West Elizabeth, West Mifflin, White Oak and Wilmerding and Part of WESTMORELAND County consisting of the TOWNSHIP of Sewickley and the BOROUGHS of Delmont, Export, Madison, Murrysville,

Sutersville and Trafford (Westmoreland County Portion).

Total population: 237,473

Dist. 46 BEAVER, GREENE, WASHINGTON and WESTMORELAND Counties.

Part of BEAVER County consisting of the TOWNSHIPS of Greene, Hanover, Independence, Potter and Raccoon and the BOROUGHS of Frankfort Springs, Georgetown, Hookstown and Shippingport; All of GREENE County; Part of WASHINGTON County consisting of the CITIES of Monongahela and Washington and the TOWNSHIPS of Amwell, Blaine, Buffalo, Canton, Carroll, Cecil, Chartiers, Cross Creek, Donegal, East Bethlehem, East Finley, Fallowfield, Hanover, Hopewell, Independence, Jefferson, Morris,

Mt. Pleasant, North Bethlehem, North Franklin, North Strabane, Nottingham, Robinson, Smith, Somerset, South Franklin, South Strabane, Union, West Bethlehem, West Finley and West Pike Run and the BOROUGHS of Beallsville, Bentleyville, Burgettstown, Canonsburg, Centerville, Claysville, Cokeburg, Deemston, Donora, East Washington, Ellsworth, Finleyville, Green Hills, Houston, Marianna, Mc Donald (Washington County Portion), Midway, New Eagle, North Charleroi, Twilight, West Alexander, West Brownsville and West Middleton and Part of WESTMORELAND County consisting of the City of Monessen.
Total population: 237,271

Dist. 47 BEAVER and LAWRENCE Counties. Part of BEAVER County consisting of the CITIES of Aliquippa and Beaver Falls and the TOWNSHIPS of Brighton, Center, Chippewa, Darlington, Daugherty, Franklin, Harmony, Hopewell, Marion, New Sewickley, North Sewickley, Patterson, Pulaski, Rochester, South Beaver, Vanport and White and the BOROUGHS of Ambridge, Baden, Beaver, Big Beaver, Bridgewater, Conway, Darlington, East Rochester, Eastvale, Economy, Fallston, Freedom, Glasgow, Homewood, Industry, Koppel, Midland, Monaca, New Brighton, New Galilee, Ohioville, Patterson Heights, Rochester, South Heights and West Mayfield and

Part of LAWRENCE County consisting of the CITY of New Castle and the TOWNSHIPS of Little Beaver, Mahoning, North Beaver, Pulaski, Taylor, Union and Wayne and the BOROUGHS of Bessemer, Ellport, Ellwood City (Lawrence County Portion), Enon Valley, New Beaver, Snpj, South New Castle and Wampum.

Total population: 237,136

Dist. 48 BERKS, LEBANON and LEHIGH Counties.

Part of BERKS County consisting of the TOWNSHIPS of Albany, Bethel, Heidelberg, Jefferson, Marion, North Heidelberg, South Heidelberg, Spring, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the BOROUGHS of Adamstown (Berks

County Portion), Hamburg, Robesonia, Sinking Spring, Strausstown, Wernersville, West Lawn, Womelsdorf, Wyomissing and Wyomissing Hills; All of LEBANON County and Part of LEHIGH County consisting of the TOWNSHIPS of Heidelberg, Lowhill, Lynn, North Whitehall, South Whitehall, Upper Macungie, Washington and Weisenberg.
Total population: 238,068

Dist. 49 ERIE County.
Part of ERIE County consisting of the CITY of Erie and the TOWNSHIPS of Conneaut, Elk Creek, Fairview, Franklin, Girard, Greene, Harborcreek, Lawrence Park, Mc Kean, Millcreek, Springfield, Summit and Washington and the BOROUGHS of Al-

bion, Cranesville, Edinboro, Fairview, Girard, Lake City, Mc Kean, Platea and Wesleyville.

Total population: 236,523

Dist. 50 CRAWFORD, ERIE and MERCER Counties.

All of CRAWFORD County; Part of ERIE County consisting of the TOWNSHIPS of Amity, Concord, Greenfield, Le Boeuf, North East, Union, Venango, Waterford and Wayne and the BOROUGHS of of Elgin, Mill Village, North East, Union City, Waterford and Wattsburg and All of MERCER County.

Total population: 239,005

Population of all districts: 11,881,643

11/15/91
PAGE 1

LEGISLATIVE DATA PROCESSING CENTER

PLACES SPLIT BY SENATE DISTRICTS

2 TOTAL PLACES 8 TOTAL SPLITS

ALLEGHENY COUNTY					
PITTSBURGH	CITY	38	42	43	
PHILADELPHIA COUNTY					
PHILADELPHIA	CITY	01	02	03	04
		05	07	08	

11/15/91
PAGE 1

LEGISLATIVE DATA PROCESSING CENTER

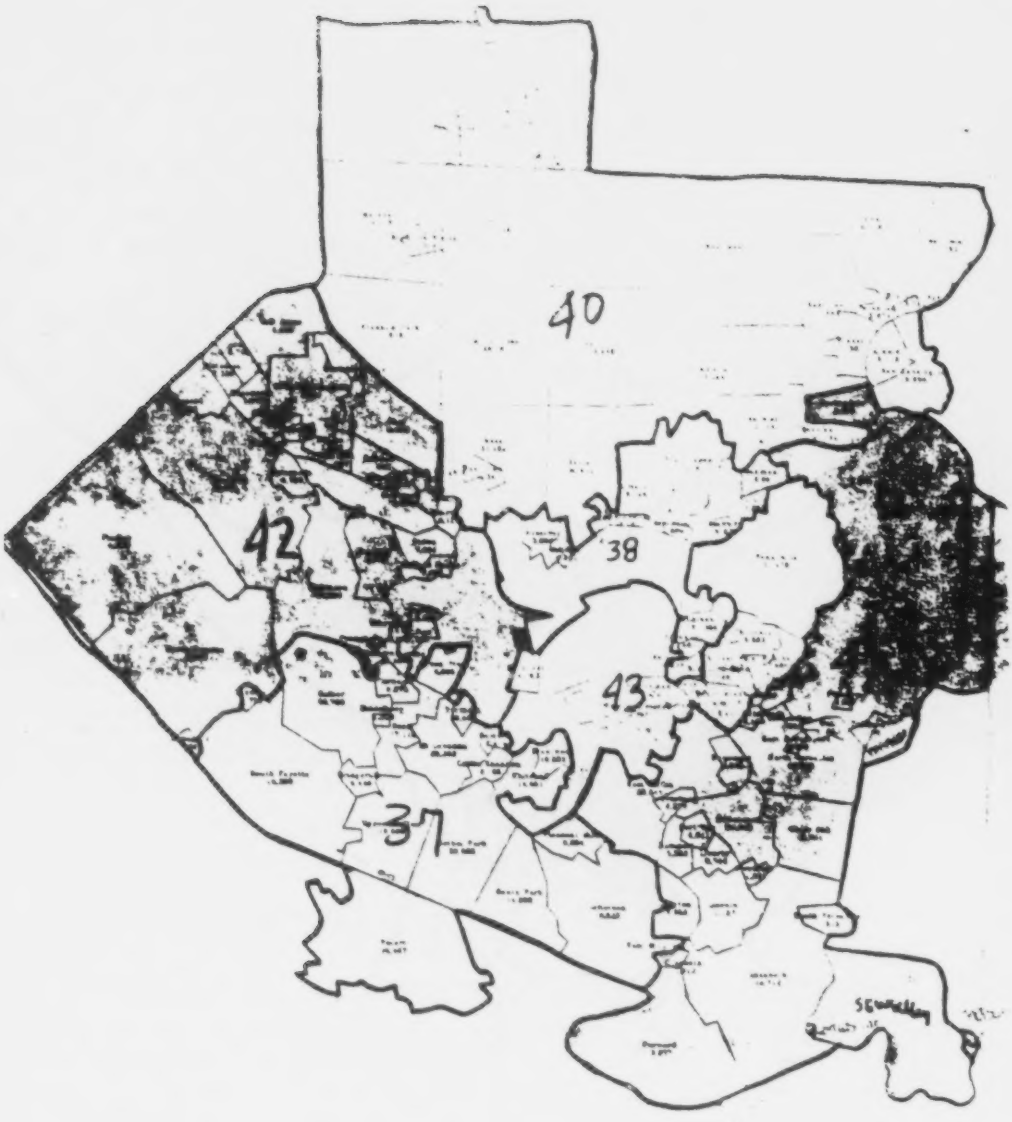
WARDS SPLIT BY SENATE DISTRICTS

19 TOTAL WARDS 19 TOTAL SPLITS

PHILADELPHIA COUNTY
PHILADELPHIA CITY

WARD 11	03	07
WARD 13	03	07
WARD 15	01	03
WARD 18	01	02
WARD 20	02	03
WARD 21	04	07
WARD 23	02	03
WARD 26	01	08
WARD 27	07	08
WARD 33	01	02
WARD 36	01	08
WARD 37	02	03
WARD 42	02	03
WARD 43	02	03
WARD 49	02	03
WARD 53	02	03
WARD 56	02	05
WARD 60	07	08
WARD 61	02	03

POLITICAL SUBDIVISION MAP
OF
PENNSYLVANIA
NEW YORK
NEW YORK
WEST VIRGINIA
MARYLAND
MARYLAND
NEW JERSEY
DELAWARE
PITTSBURGH
PHILADELPHIA



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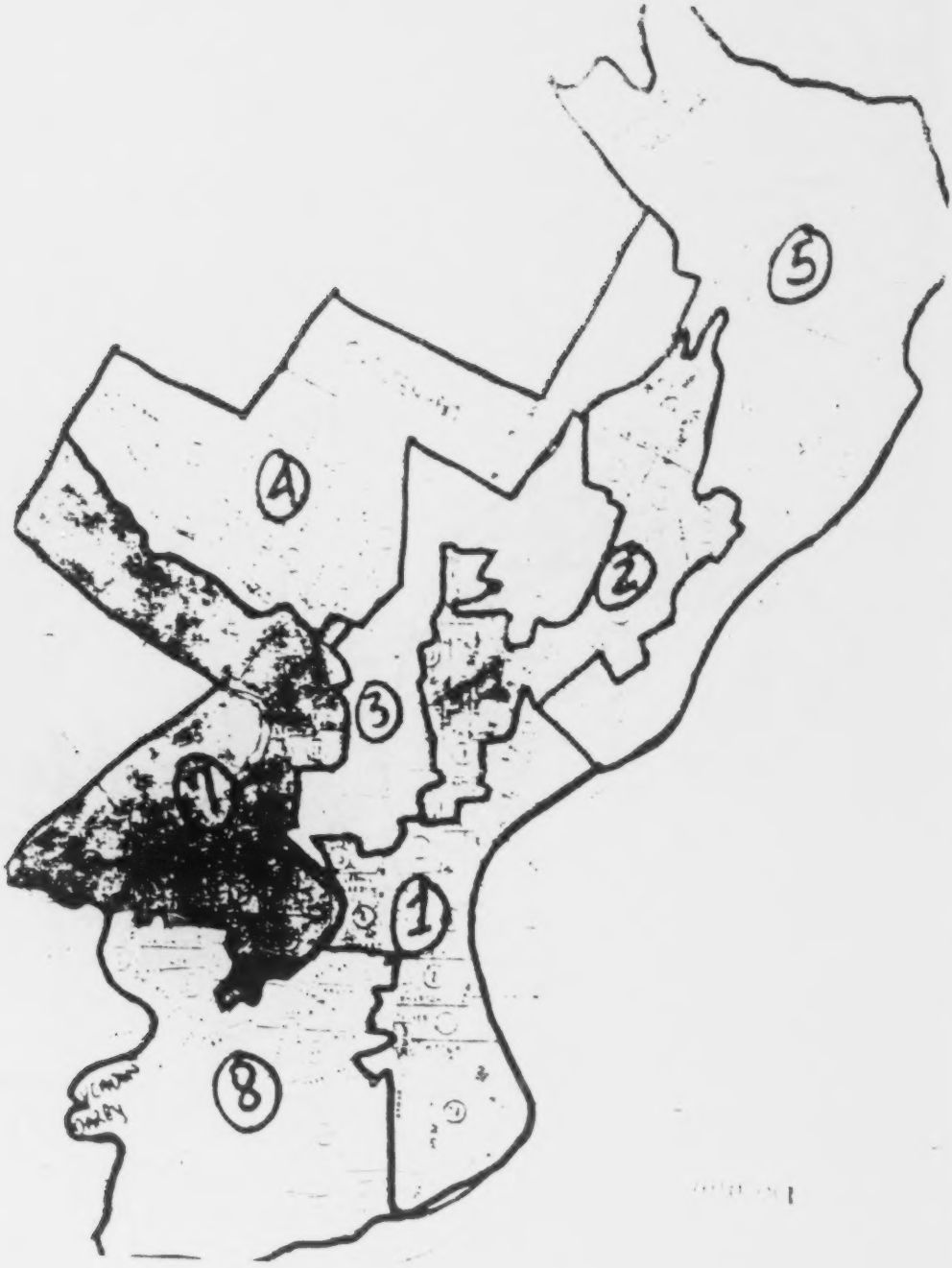

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COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT COMMISSION

In re: Public Hearing of the Legislative Reapportionment Commission

* * * * *

Stenographic report of hearing held in Room 8A East Wing, Main Capitol Building, Harrisburg, Pennsylvania

Wednesday,
September 25, 1991
10:00 a.m.

ROBERT J. CINDRICH, ESQUIRE, CHAIRMAN

MEMBERS OF LEGISLATIVE
REAPPORTIONMENT COMMISSION

Sen. Joseph Loeper
Sen. Robert Mellow
Hon. John Parzel
Hon. Allen Kukovich (Deputy Commissioner for Hon. H. William DeWeese)

Also Present:

Ken Gormley, Esquire, Executive Director
Stephen J. Harmelin, Esquire, Chief Counsel
David Woods, Chief of Staff to Senate Majority Leader
Donna Memmi Malpezzi, Counsel to Majority Leader
Stephen MacNett, Gen. Counsel, Senate Republican Caucus
C.J. Hafner, Counsel to Senate Minority Leader
Mark McKillop, Senate Democratic Research

Scott Casper, Executive Director for the House Reapportionment Office
Joseph Murphy, Chief Counsel to House Republican Caucus
Stephen Dull, Director, House Rep. Member Services
Michael Rosenstein, Executive Director, Republican Appropriations Committee

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
536 Orrs Bridge Road
Camp Hill, PA 17011
717-737-1367

CHAIRMAN CINDRICH: At this time, we'll call to order the public meeting of the Commonwealth of Pennsylvania Reapportionment Commission.

Present here today are the members of the Commission, the Honorable F. Joseph Loeper, Senate Majority Leader; the Honorable Robert J. Mellow, Senate Minority Leader, the Honorable Allen Kukovich on behalf of the Honorable H. William DeWeese, House Majority Leader; the Honorable John M. Perzel, House Minority Policy Chairman; and myself, Robert Cindrich, serving as Chairman.

Our first thing on the agenda is the approval of the minutes of the meeting, public meeting, of September 5, 1991. Those have been distributed in advance. Is there a motion for the approval of the minutes of the September 5, 1991 meeting?

REPRESENTATIVE KUKOVICH: I move we approve the minutes.

CHAIRMAN CINDRICH: Second?

(No response.)

CHAIRMAN CINDRICH: We need a second on the approval of the minutes of the last meeting.

REPRESENTATIVE PERZEL: Oh, second.

CHAIRMAN CINDRICH: All in favor?

SENATOR MELLOW: Aye.

* * *

I'm afraid that fairness, like beauty, is in the eyes of the beholder, and that there will be many interpretations of who won and who lost in each particular district, and perhaps overall. I think, however, that the plan is a fair composite for the entire Commonwealth of Pennsylvania, and I would support its adoption, and I would therefore second the motion.

SENATOR LOEPER: Mr. Chairman?

CHAIRMAN CINDRICH: Senator Loeper.

SENATOR LOEPER: Thank you, Mr. Chairman. Is it in order to discuss the motion?

CHAIRMAN CINDRICH: All right. We'll call for the question and then that will open it up for discussion, Senator, and now would be the appropriate time to discuss it.

SENATOR LOEPER: Okay, thank you, Mr. Chairman.

Mr. Chairman, I would just like to take a moment to put some remarks on the record as far as concerns I have about this process, about the plan that's before us today, and then, Mr. Chairman, I would like to take the opportunity to offer an amendment to the plan that's before us today.

Mr. Chairman, I realize the work of this Commission has been a long and arduous process. It's one that started back last spring. As everyone is well aware, I had the opportunity to serve as the temporary Chairman of this Commission until we were able to have a Chairman. Unfortunately, we were not able to select a Chairman by a majority vote of this Commission, even though we interviewed some extremely well-qualified individuals to serve in that capacity. A majority consensus among the four Commissioners at that time could not have been reached. Mr. Chairman is well aware after that the issue was decided by the Supreme Court of Pennsylvania that declared yourself as the Chairman of this Commission to arbitrate this process through its conclusion.

I think that your direction to us at that time was to try and bring maps as we believed represented the population shifts in Pennsylvania and had asked each side to present to you a map that reflected that. I think as we look at Pennsylvania's population of 1990, we have seen major population shifts throughout this Commonwealth. We have seen a significant loss of population in our major urban areas, such as Philadelphia and Pittsburgh, and I think that we've seen a migration of that population particularly to the southeast suburban counties, to the northeast areas. And I think that when we drew those maps, Mr. Chairman, we tried to draw it based on those shifts in population.

I think that one of the most disturbing decisions that has been made, in my view, by the Chairman was the decision

in the Pittsburgh area to merge a Republican and Democratic seat. The Chairman had indicated that regardless of what the population losses were, that it was his view that a Republican and Democratic seat had to be merged in order to move an additional seat to the east to reflect that population growth.

Mr. Chairman, it's my view that that was an arbitrary decision, it was a very partisan decision, and based on partisan concerns.

Mr. Chairman, it was you and solely you, as I understand it, and you directed us to make the decision that you were going to eliminate the 44th Senatorial District and merge that with the 43rd Senatorial District in the city of Pittsburgh, and that I think that you directed us then about a week ago to move that

44th District seat to the east to become the new seat.

I disagree strongly, Mr. Chairman, with that premise. I don't believe that our mission is to make sure that there is a partisan balance as far as the House and Senate is concerned. I believe that our mission is not to have to merge a Republican and Democratic district, and I think that what we have to base our decisions on are the demographics of the area.

And let me just take a moment and give you what I believe to be the example of the western area, particularly Allegheny County.

Allegheny County, Mr. Chairman, has seven Senate districts. There are four Democratic members of the Senate represented by those districts, and there are three Republican members. However, Mr.

Chairman, I think if we look at the numbers, the demographics, we see that the four Democratic districts within the city of Pittsburgh lost a total of 102,000 people in the last 10 years. If we were to look at those districts specifically, we would see that the 38th District lost 30,505 people; the 45th District, 26,796 people; the 43rd District, 26,687 people; and the 42nd District 17,943 people.

However, Mr. Chairman, when we look at the surrounding three districts outside the city, the ones that are represented by Republicans, we see that the total loss in those three districts was just 26,000 people - almost one-fourth the number of loss as within the city. And therefore, I think in order to merge a Republican and Democratic district is an arbitrary decision and not one that agrees with the demographics of the area.

I think also, Mr. Chairman, it's important to note that the registration in the districts that are held by the Republicans are heavily Democratic. In the 44th District, the district that you're eliminating, that is a 60-percent registered Democratic district. In the 40th District, it's a 56-percent registered Democratic district, and in the 37th District it's a 51-percent registered Democratic district.

Mr. Chairman, it's the voters in those districts that have elected their representatives, regardless what the voter registration trends may be in that district. And I think it's particularly important, Mr. Chairman, to note that the 44th District, which you made the call to eliminate and to move to the east, represented by Senator Pecora, a gentleman who has been elected and re-elected in that

district by the voters of that district for four consecutive terms, now in his 13th year serving in the Senate, has been elected by a district that's registered 60-percent Democrat.

And, Mr. Chairman, in addition to that, I disagree with the merger of an even numbered district that cuts an incumbent's term, which is exactly the decision you have made relevant to Senator Pecora. I believe that if in fact we do proceed and eliminate that even numbered district and move it to the east, we have forced the creation of a special election situation for next year for that 44th District, which would make a two-year term.

I also believe, Mr. Chairman, that it appears that the elimination of this seat in mid-term is unconstitutional, and I am certain that if it's the decision of

this Commission and its Chairman to eliminate that seat from the city of Pittsburgh, to move that seat to the east and create a special election, that certainly that will be an issue that will be decided in future litigation.

And I think, Mr. Chairman, at this time I would also like to enter for the record a map which indicates essentially population gains and losses by Senate district throughout the State which graphically demonstrates the major loss of population in the city of Pittsburgh and the relatively minor loss of population in the districts surrounding the city of Pittsburgh, and I'd like to have that entered in as part of the record today.

CHAIRMAN CINDRICH: For purposes of clarity, Senator, would it be all right if we marked on here Loeper Exhibit 1?

SENATOR LOEPER: That's fine.

CHAIRMAN CINDRICH: Thank you.

(Whereupon, Loeper Exhibit No. 1 was produced and marked for identification.)

SENATOR LOEPER: Mr. Chairman, we have before us a redistricting plan, and I think that the tests that a redistricting plan must meet have been fairly well enumerated over time, and nowhere, Mr. Chairman, is it written that the goal of the plan is to preserve the existing political balance. That issue, Mr. Chairman, is certainly the aim of the parties involved, but it's not the central mission of this Commission. We cannot alter the population change or deny the community and political interests of minority population groups. We are not required to compensate a party that believes it may be at risk because of population shifts.

This redistricting plan, Mr. Chairman, must be constitutionally defensible and not politically defensible. To shape a plan that eliminates an even . . . .

* * *

I believe, Mr. Chairman, that this particular configuration will enhance the opportunity for the black community in Pittsburgh and Allegheny County to have a significant impact on the election of a candidate of their choice, and for those reasons that I've enumerated already, Mr. Chairman, I would ask for an affirmative vote on the amendment.

CHAIRMAN CINDRICH: This is a motion to amend the motion that's pending, am I correct?

SENATOR LOEPER: Excuse me, Mr. Chairman?

CHAIRMAN CINDRICH: Representative Kukovich has a motion pending, and I take

it that this is a motion to amend the motion pending?

SENATOR LOEPER: That's correct.

CHAIRMAN CINDRICH: It there a second to the motion?

REPRESENTATIVE PERZEL: I second it.

CHAIRMAN CINDRICH: All right, seconded by Representative Perzel.

Before we call for the question, I would like to make a brief response to some of the remarks made by Senator Loeper, since most of them were directed to the Chair, and I think also appropriately so.

First, I think it's nothing short of preposterous to suggest that politics play no part in a reapportionment, and that it's very difficult to say something like that and keep a straight face. In fact, if politics played no part in reapportionment, the Constitution of Penn-

sylvania would not have had the Commission comprised of majority and minority leaders from both parties. That, obviously, is a design, and that design is intended to allow politics to play a part. Nothing wrong with that at all, because it is through politics that the voter exercises the right to vote.

To suggest, however, that it is possible, given the constitutional mandate as to the creation of the Commission, to construct any form of reapportionment plan for the State without taking into account political issues such as the balance of political power, protection of incumbencies, is, as I have already said, preposterous, and I don't think I need to comment any further on it.

Now, you know, in some States they don't have commissions like this that are set up this way. The Libertarian Party,

for example, has made a proposal that the Commission should never include politicians and you should disregard incumbencies, so that what you would do is every 10 years you would simply start all over again, forget about where the existing districts are, start with new ones and forget all that. However that's not been done in Pennsylvania, and we have a constitutionally set-up scheme here which does include the political parties and calls for their active input.

That's the first comment I have to make. So that there is a distinct difference in where a district boundary is drawn. I can draw you a boundary that will make that area a Democratic area, I can draw you the same district and I can make it Republican. And as the Senator has suggested, we can do that on the basis of registration, we can do it on the

basis of population, voting trends, whatever. So that what we have tried to do, what I have tried to do as a neutral, is listen to the arguments of both parties as to how their political opportunities will be enhanced or damaged by one configuration or another. As a matter of fact, I would say that about 99 percent of the discussion we have over the past 90 days has been along those lines.

Now, we first, of course, start with the Constitution of Pennsylvania, which sets forth the basic requirements. We need relative equality in districts. We need to split municipal boundaries only when absolutely necessary. We then, in addition to the Pennsylvania Constitution, must adhere to the Federal Constitution and to the Federal Voting Rights Act. Having done all that, the only

question left is where does this district go?

Now, with regard to Allegheny County, there is no question that the demographics, and that is the shift in population has mandated that a Senate seat be lost. There simply are not enough people in that side of the State to support as many Senators as were supported before, when you consider that we need about 238,500 per Senate seat. So one of them had to be squeezed out.

The political parties take positions. Naturally, if you are a Democrat, a good position is to say that you should combine two Republican districts so that there will only be one Republican left. And if you're a Republican, as the Republicans did propose, you should combine two Democrat districts so that there will be one less Democrat around. And if

you're a neutral Chairman you say, why don't you combine one of each so that neither of you gains an advantage by virtue of the fact that the Constitution requires us to match up the population with the districts, and that's what the Chairman did.

There is a lot of difficulty when you eliminate a district. You see, there are people in there who voted for one Senator, and there are people in the other district which is being combined who voted for another Senator. In this case, as the Chairman mandated, and the Senator was correct in that, that was my mandate, people on one side voted for a Republican candidate, people on the other side voted for a member of the Democrat Party. And when you combine those, it's impossible to create a district which has more than 50 percent of the old district.

Now, Senator Loeper talks in terms of interfering with the right of these people who elected Senator Pecora to have him as their Senator. Is that true in the new district? At least 50 percent of those people didn't elect him, did they? They elected the other candidate, whose district also disappeared. So that it's not so clear that when we combine a district that the people in that district are well-served to have forced upon them someone they didn't vote for, at least 50 percent of them.

Now, if you would go to the odd numbered scheme that Senator Loeper has proposed, it would leave the incumbent Senator in office for two years. Well, for the balance of the term which would be roughly two, almost three years now until a new Senator could be elected. That would mean that people in that district

would be represented by someone who they didn't choose. By doing it with an even number -- I'm sorry, with an odd number and moving an even number to the district in the east, it meant that an election would happen this spring and now the voters can decide who will represent them in the new district. It seemed to the Chairman that that was a more fair way of deciding who the Senator should be and from what political party, rather than having us preserve incumbency.

Now, I's sure that you can listen to arguments all day one way or the other. I called it as I see it, and yes, there is an element of politics in that decision, and I say it because as I've indicated prior, to suggest otherwise would be just to deny reality and deny the very composition of this Commission.

Now, as to a couple of other points about demographics. When you look at the shift in the loss in population in the Allegheny County area, what we find is that it had little or no effect on the registration of people there, the party registration. So that while the Republican argument was that the Democrats should lose two seats, in fact 10 years ago the registration was roughly 70 percent Democrat, 30 percent Republican. Ten years later, same area looking at it from a jet up high, still 70 percent Democrat, 30 percent Republican. I was hard-pressed to determine why that should mean the loss of an incumbent seat for the Democrats.

Secondly, talking about demographics, it's clear, and from the chart that Senator Loeper has introduced here today, which we marked as Loeper Exhibit

No. 1, the green portion of this shows that the population moved roughly to the east and to the southeast of Pennsylvania. So that when we were going to create a new district, we would try to create it where the people are. Keep in mind, you simply lay down a district on top of people, and there have to be 238,000 in there. When you do that, you find that it comes out, you can put it somewhere in the east. You could put it up around here where you see all this dark green, you could put it down in here at the bottom extreme corner southeast, you could put it somewhere, and what did I do? I entertained proposals and accepted the proposal of the Republican Party for where that district should go. In fact, that district will be comprised of a very predominant majority Republican, I believe 58 percent or so Republi-

can, perhaps higher. 59 percent, perhaps.

So what we've done is tried, as I've suggested, to reflect both the demographics and the notion that people should be represented by someone who they elected and not someone who they didn't elect. So that on balance with the population going east and that seat being clearly a seat that will favor a Republican candidate by very strong voter trends and by very strong registrations, then in the west both parties lost a side. If we had gone the other way we would have the rather anomalous situation of the Allegheny County region having a 70-30 voter registration edge and having a 50-50 party split in terms of the representation in the Senate of Pennsylvania. It didn't seem to the Chairman to be an appropriate thing to do.

As I say, I can't deny that there are appealing arguments to both sides of this, but those were primarily the arguments that persuaded me to do what I have done, at least preliminarily, and indicating to the Senators how I would vote on those issues to make this plan, the one that's before us, before us.

I think that the plan all in all, though it causes great hardship to Senator Frank Pecora, ...

* * *

. . . those kinds of decisions have to be made, I make them. And I, you know, don't relish it, but it certainly is a part of this job and it's one of the reasons why they do bring a neutral in here, and so to those who are adversely affected, our apologies. We'll go on and we'll persevere and may you run again and win again.

All right. Now, are there any further comments on the preliminary plan of reapportionment as presented by Representative Kukovich?

(No response.)

CHAIRMAN CINDRICH: At this time, we'll call for the question. I think we should take this vote via voice.

We'll start with Senator Loeper.

SENATOR LOEPER: Yes, Mr. President.

For all the reasons that I've indicated today, and I think very obviously tried to offer amendments to make my points, as far as the adoption of this preliminary plan, I vote "no."

CHAIRMAN CINDRICH: Senator Mellow.

SENATOR MELLOW: Mr. Chairman, I think you've done an outstanding job, but I disagree with your last vote on the amendment, but notwithstanding that, I think you and Steve and Ken have done an

excellent job on the staff in taking a very difficult job and to the best of your ability putting it together, and I support you on the plan.

CHAIRMAN CINDRICH: Thank you, Senator.

Representative--I guess we'd better be consistent.

Representative Kukovich.

REPRESENTATIVE KUKOVICH: I vote "yes," Mr. Chairman.

CHAIRMAN CINDRICH: Representative Perzel.

REPRESENTATIVE PERZEL: I vote "yes," Mr. Chairman.

CHAIRMAN CINDRICH: The Chairman votes "yes."

That being said, the motion passes, and the preliminary plan of reapportionment for the Commonwealth of Pennsylvania passes four votes to one vote.

Before we adjourn, I am directing that the plan be filed in accordance with the Constitution of the Commonwealth of Pennsylvania, and I think that Mr. Gormley will take care of seeing that that is done before the end of the day.

We will hold a public hearing on Wednesday, October 9, 1991, commencing at 1:00 o'clock[.]

Commonwealth of Pennsylvania
Legislative Reapportionment Commission
612 North Office Building
Harrisburg, Pennsylvania 17120
717-772-3501
FAX 717-772-3503

MINUTES--PUBLIC HEARING
October 9, 1991
1:00 p.m.
Room 8A East Wing, Main Capitol Building,
Harrisburg, Pennsylvania

ROBERT J. CINDRICH, CHAIRMAN

MEMBERS OF THE LEGISLATIVE REAPPORTIONMENT COMMISSION

Senator F. Joseph Loeper
Senator Robert J. Mellow
Representative John M. Perzel
Representative Allen Kukovich (Deputy Commissioner for Representative H. William DeWeese)

Also Present:

Stephen J. Harmelin, Esquire, Chief Counsel
Ken Gormley, Executive Director
David Woods, Chief of Staff to Senate Majority Leader
Stephen MacNett, General Counsel, Senate Republican Caucus
Donna Malpezzi, Counsel to Senate Majority Leader
C.J. Hafner, Counsel to Senate Minority Leader

Mark McKillop, Senate Democratic Research Staff
Scott Casper, Executive Director for the House Reapportionment Office
Stephen Dull, Director, Republican Member Services

The meeting was called to order by Chairman Cindrich. The Chairman issued a reminder concerning the public comment period established by the Pennsylvania Constitution, by which citizens or groups who are interested in providing comments to the Commission may do so by sending their comments in writing to the Commission for a thirty-day period. The deadline for submitting such comments was therefore Friday, October 25, 1991 at midnight. He also announced that anyone interested in obtaining the racial breakdown of any legislative or senatorial district could do so by contacting the Commission Office.

The Chairman announced that an executive session of the Commission had pre-

ceded the public portion of the meeting. At this session the Commission conferred with legal counsel concerning the above deadline, as well as the deadline for filing a final plan. Also discussed was the the [sic] scheduling of further public meetings.

The remainder of the public meeting was devoted to hearing lengthy public testimony concerning the preliminary reapportionment plan submitted to the Secretary of the Commonwealth on September 25, 1991. Testimony was presented, and considered by the Commission, as offered by the following citizens and organizations:

1) Robert Grant, Acting Secretary of the Commonwealth

2) Anthony Martin, Esquire, Attorney for Senator Frank Pecora

3) Dan Torisky, Monroeville

4) Larry Dunn, Allegheny County Commissioner

5) Yvonne Lamanna, Penn Hills School Board

6) Charles Kindle, Penn Hills NAACP

7) Philip Dunn, Staff to Senator Tim Shaffer

8) Frank P. Krizner, Esquire, Butler County Solicitor

9) Lawrence Roberts, Uniontown

10) Francis Zaffina, Westmoreland County

11) Wilbur W. McCutcheon, President, Crescent Township Board of Commissioners

12) Harriet Lewis, Commissioner, Crescent Township

13) Representative Ron Gamble

14) Calvin Allison, House District 70

15) Ada Glessner, House District 70

16) Patricia DeCarlo, Philadelphia Latino Voting Rights Committee

17) Representative Ralph Acosta, House District 180

18) Senator Stewart Greenleaf, Senate District 12

19) Bernard Borine, Cheltenham Township Commissioner

20) Bernard Kanefsky, Lower Moreland Commissioner

21) Louise Bailey, Yeadon Borough, Delaware County

22) David Ennis, Abington Township

23) Richard Glanton, Esquire, Republican City Committee of Philadelphia

24) Joseph Rocks, Former State Representative and Senator

25) Samuel Walters, Assistant General Counsel to the National NAACP

26) Representative Thomas M. Tigue, House District 118

27) Matthew E. Baker, Esquire, Tioga and Potter Counties

28) Louis R. Donahue, Curwensville Borough Council

29) John K. Risser, House District 199

Chairman Cindrich offered closing remarks, indicating that the day of public testimony from such a variety of citizens and organizations was extremely valuable to the work of the Commission. The Chairman then entertained a motion to adjourn. Moved by Senator Mellow.

Seconded by Senator Loeper. Unanimously passed. The meeting concluded at 5:45 p.m.

Respectfully submitted,

/s/
Ken Gormley
Executive Director

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT COMMISSION

In re: Public Meeting of the Legislative Reapportionment Commission

* * * * *

Stenographic report of hearing held in Room 8A East Wing, Main Capitol Building, Harrisburg, Pennsylvania

Friday, November 15, 1991
10:00 a.m.

ROBERT J. CINDRICH, ESQUIRE, CHAIRMAN

MEMBERS OF LEGISLATIVE
REAPPORTIONMENT COMMISSION

Sen. Joseph Loeper
Hon. Allen Kukovich- (Deputy Commissioner for Hon. H. William DeWeese)

Sen. Robert Mellow
Hon. Thomas P. Gannon- (Deputy Commissioner for Hon. John M. Perzel)

Also Present:

Ken Gormley, Esquire, Executive Director
Stephen J. Harmelin, Esquire, Chief Counsel
Stephen Matthes, Esquire, Asst. to Mr. Harmelin
David Woods, Chief of Staff to Senate Majority Leader
Stephen MacNett, General Counsel, Senate Republican Caucus
Michael Long, Staff to Senate Majority Leader
C.J. Hafner, Counsel to Senate Minority Leader

Mark McKillop, Senate Democratic Research
Scott Casper, Executive Director for the House Reapportionment Office
Stephen Dull, Director, House Republican Member Services

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
3606 Horsham Drive
Mechanicsburg, PA 17055
717-732-5316

* * *

CHAIRMAN CINDRICH: All right. Now we'll call for the vote on Final Senate No. 1 and Final House No. 1.

Senator Loeper.

SENATOR LOEPER: I vote "no."

CHAIRMAN CINDRICH: Senator Mellow.

SENATOR MELLOW: No.

CHAIRMAN CINDRICH: Representative Kukovich.

REPRESENTATIVE KUKOVICH: Let's try "yes."

CHAIRMAN CINDRICH: Representative Gannon.

REPRESENTATIVE GANNON: Yes.

CHAIRMAN CINDRICH: The Chair votes "yes."

The Reapportionment Commission has thereby adopted a plan of reapportionment for the Commonwealth of Pennsylvania by a 3 to 2 vote.

I wish to advise members of the public that any person aggrieved by the -- any aggrieved person may file an appeal from the final plan directly with the Supreme Court within 30 days of the filing thereof. We plan to file that today. If the person aggrieved establishes that the final plan is contrary

. . . .

LAW OFFICES
DILWORTH, PAXSON, KALISH & KAUFFMAN
2600 THE FIDELITY BUILDING
PHILADELPHIA, PENNSYLVANIA 19109-1094
(215) 875-7000
FAX (215) 875-8540

WASHINGTON, D.C.
LOS ANGELES, CALIFORNIA
SCRANTON, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
BOCA RATON, FLORIDA
WEST ATLANTIC CITY, NEW JERSEY
CAMDEN, NEW JERSEY

DIRECT DIAL (215) 875-7038

January 28, 1992

Charles W. Johns, Esquire
Prothonotary
Supreme Court of Pennsylvania
468 City Hall
Philadelphia, PA 19107

Re: Andrews, et al v. Pennsylvania Legislative Reapportionment Commission, No. 190 E.D. Misc. Dkt. 1991, et al.

Dear Mr. Johns:

During arguments on the challenges to the Legislative Reapportionment Commission's final reapportionment plan, there appeared to be some confusion as to the residency requirements applicable to

state legislators. This is to confirm that Article II, § 5 of the Pennsylvania Constitution requires senators to live in the district they represent during the term of their service. A copy of this letter is being sent to all counsel this date.

Very truly yours,

/s/
Barbara A. Brown
Counsel to the Pennsylvania Legislative Reapportionment Commission

BAB/jmy

cc: (See following page)

Dilworth, Paxson, Kalish & Kauffman
To: Charles W. Johns, Esquie

cc: Robert J. Cindrich, Esq.
Kenneth Gormley, Esq.
Hon. F. Joseph Loeper
Hon. Robert J. Mellow
Hon. H. William DeWeese
Hon. John M. Perzel
Russell F. Walker
Nicholas Sellers, Esq.
Joe Gambescia
Anthony J. Martin, Esq.
William E. Miller, Jr., Esq.
John Broujos
Eric B. Schnurer, Esq.
Andrew Gordon, Esq.
Jack W. Connor, Esq.
Thomas Rabbitt Zajac
John M. Purcell, Esq.
Donald R. Walko, Jr., Esq.
Angelo T. Almonti, Esq.
John Randolph Prince, III, Esq.
Emory W. Buck, Esq.
William H. Lamb, Esq.
David E. Landau, Esq.
Dante G. Bertani
Bruce S. Marks, Esq.
Mary F. Platt, Esq.
Dennis J. Miller, Esq.
Frederick E. Charles, Esq.
J. Matthew Wolfe, Esq.

Supreme Court, U.S.
FILED
JUN - 9 1992
OFFICE OF THE CLERK

(3)

No. 91-1789

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1991

FRANK A. PECORA, Senator,
44th Pennyslvania Senatorial District,
Petitioner,
v.
PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT
COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

SUPPLEMENTAL BRIEF

Anthony J. Martin
Counsel of Record
Martin & Martin, P.C.
Monroe Complex, Building One
2520 Mosside Boulevard
Monroeville, Pennsylvania 15146
(412) 372-3879

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SUPPLEMENT TO OPINIONS BELOW

At the time of the Petitioner's filing of his Petition for Writ of Certiorari, the Pennsylvania Supreme Court had issued only a short Per Curiam Opinion accompanying its February 14, 1992 Order upholding the constitutionality of the Final Plan of Reapportionment (Plan) adopted by the 1991 Pennsylvania Legislative Reapportionment Commission (Commission) (Pet App. [hereinafter "A"] 1-3). This Per Curiam Opinion stated that "[o]pinions will follow" (A 3). After Petitioner filed his Petition for Writ of Certiorari, the Pennsylvania Supreme Court issued a full Opinion, authored by Chief Justice Nix, on May 1, 1992 (Pet. Supp. Appendix [hereinafter "SA"] 1-58). This opinion has not yet been officially or unofficially reported.

SUPPLEMENT TO STATEMENT OF THE CASE

In its Opinion dated May 1, 1992, the Pennsylvania Supreme Court acknowledged that in the wake of the legislative reapportionment, "Senator Pecora lives hundreds of miles away from his district" (SA 26). The Pennsylvania high court nevertheless determined that Senator Pecora was not "automatically expelled" from his Senate seat by the Commission's action in adopting the Plan (SA 27-28). The court reasoned that:

> Only the Senate has the authority to judge the qualifications of its members. In re Jones, 505 Pa. 50, 58, 476 A.2d 1287, 1290-91 (1984); see Pa. Const. Art. II, § 9. . . . Thus the Senators incorrectly characterize the Commission's actions as depriving the Senators of their offices.

(SA 28 (emphasis added).)

The Pennsylvania Supreme Court went on to hold that, even assuming the Senate did not seat Senator Pecora, he was "not

being deprived of a constitutionally protected interest" (SA 28-29). In other words, Senator Pecora's interest in his office was a "highly circumscribed" one which "does not merit constitutional protection" (SA 29). Consequently, the court below did not reach the merits of Senator Pecora's equal protection claims of arbitrary discriminatory treatment and political gerrymandering.

The court below did address Senator Pecora's argument that the citizens of the 44th Senatorial District "will be without senators for the next two years and will be deprived of the right to petition the government for redress of their grievances" (SA 30). In rejecting this argument, the lower court reasoned that, if the Senate "will not seat Senator Pecora," the citizens of the 44th Senatorial District "will be represented

in the Senate by operation of the special election statute," citing 25 P.S. § 2778 (SA 30-31).[1]

Senator Pecora now files this Supplemental Brief in order to respond to and comment upon the relevant portions of the Pennsylvania Supreme Court's Opinion.

SUPPLEMENTAL REASONS WHY THE PETITION SHOULD BE GRANTED

The Pennsylvania Supreme Court refused to reach the merits of Senator Pecora's equal protection claims for two reasons. First, the lower court took the

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[1]In support of this conclusion, the court reasoned as follows:

> Anytime a vacancy occurs in a legislative district, the presiding officer of the house is required to call for a special election. . . . This is regardless of the underlying cause of the vacancy, be it death, resignation or expulsion.

(SA 31-32 (citation omitted).)

position that these claims were "not yet ripe for review because no senator has suffered adverse consequences in the form of losing a seat for failure to satisfy the residency requirement" (SA 22). Second, even assuming that the Senate would refuse to seat Senator Pecora, he was "not being deprived of a constitutionally protected interest" (SA 28-29). As will be shown below, neither of these reasons precludes consideration of Senator Pecora's federal equal protection claims by this Court.

First, Senator Pecora's equal protection claims are ripe for adjudication. To the extent that "issues of ripeness involve, at least in part, the existence of a live 'Case or Controversy,'" Regional Rail Reorganization Act Cases, 419 U.S. 102, 138 (1974), Senator Pecora suffered immediate injury from the Commis-

sion's adoption of the Plan. The Plan eliminated the 44th Senatorial District as a voting district in Allegheny County in western Pennsylvania, where Senator Pecora resides, and created a new 44th Senatorial District in southeastern Pennsylvania. As a direct consequence of this legislative reapportionment, "Senator Pecora [now] lives hundreds of miles away from his district" (SA 26). Thus, as a practical matter, the legislative reapportionment has made it extremely difficult, if not impossible, for Senator Pecora to continue to represent the 44th Senatorial District.

In addition, the legislative reapportionment has subjected Senator Pecora to a real and imminent threat that he will be expelled from the Senate for failure to meet the residency requirements for state senators prescribed by

the Pennsylvania Constitution. See Pa. Const. Art. II, §§ 9, 11. The 44th Senatorial District having been moved to southeastern Pennsylvania, Senator Pecora no longer meets either the "one year next before" or the "term of service" residency requirements of Pa. Const. Art. II, § 5. It is true that the Pennsylvania Supreme Court withheld decision on whether the Senate could waive these residency requirements for Senators who are separated from their districts by a legislative reapportionment "less than one year before an election" (SA 23). The lower court, however, thereby strongly implied that with respect to Senator Pecora, who was separated from the 44th District more than two years before the next election in that district, no such waiver would be permissible under the Pennsylvania Constitution.

The Pennyslvania Supreme Court further paved the way for Senator Pecora's expulsion by expressly ruling that the vacancy created by such an expulsion could be filled by a special election held under 25 P.S. § 2778 (SA 30-31).

In sum, Senator Pecora suffered a real and immediate injury from the operation of the legislative reapportionment Plan. Since that injury would be redressed by the relief requested, the "Case or Controversy" requirement of Article III has been met. See Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 81 (1978).

To the extent that the doctrine of ripeness rests on prudential considerations, these considerations "also argue strongly for a prompt resolution of the claims presented." Id. at 81. The basic rationale of the ripeness doctrine "is to

prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Laboratories v. Gardner, 387 U.S. 136, 148 (1967). In Abbott Laboratories, this Court indicated that the question of ripeness turns on "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." Id. at 149.

With respect to the "fitness" for judicial decision of the federal equal protection issues raised by Senator Pecora in his Petition, these issues are "purely legal, and will not be clarified by further factual development." Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 581 (1985). Moreover, postponement of decision would work a substantial hardship on Senator Pecora. The likelihood that the Pennsylvania

State Senate will expel him for failure to meet the residency requirements of the Pennsylvania Constitution has made it imperative for Senator Pecora to make certain fundamental decisions concerning his political and personal future as soon as possible. Thus, as in the Regional Rail Reorganization Act Cases, supra, 419 U.S. at 144, "decisions to be made now or in the short future may be affected" by whether the Court acts to grant Senator Pecora's Petition.

It makes no difference that the Pennsylvania Senate has not yet actually ruled on Senator Pecora's qualifications to continue to serve as State Senator from the 44th Senatorial District. "One does not have to await the consummation of threatened injury to obtain preventative relief. If the injury is certainly impending, that is enough." Id. at 143.

As the court below acknowledged, the State Senate is mandated by the Pennsylvania Constitution to judge the qualifications of its members. See Pa. Const. Art. II, § 9. Senator Pecora no longer meets the residency requirements of Pa. Const. Art. II, § 5. These requirements cannot be waived except perhaps in cases where an election is to be held less than one year after the legislative reapportionment (SA 23). The election in the 44th Senatorial District is more than two years away. Thus, it is all but a foregone conclusion that the State Senate will expel Senator Pecora just as soon as it takes up the question of his qualifications.[2]

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[2]Pennsylvania Senate Majority Leader, F. Joseph Loeper (Republican), viewed the Plan as having the effect of cutting off Senator Pecora's term (A 106) ("I disagree with the merger of an even numbered district that cuts an incumbent's term, which is exactly the decision you

The interest of the citizens of Pennsylvania would also be well served by a prompt resolution of all issues concerning the constitutionality of the legislative reapportionment. Lingering uncertainty over the constitutionality of the Plan should not be permitted to interfere with future elections.

As for whether Senator Pecora has, or must even demonstrate, a "constitutionally protected interest" in his office, it should first be noted that the Pennsylvania Supreme Court's decision is in conflict with recent federal decisions on this point. It is true that in Taylor v. Beckham, 178 U.S. 548, 576-77 (1900), and Snowden v. Hughes, 321 U.S. 1, 7 (1944), this Court held that an elected

---

have made relevant to Senator Pecora") (emphasis added). Senate Minority Leader, Robert J. Mellow (Democrat), likewise viewed the Plan as resulting in the removal of Senator Pecora (SA 59-60).

political official does not have either a liberty or property right in his office, and accordingly that the due process clause of the Fourteenth Amendment affords him no protection when a state seeks to remove him from the position. Following this Court's more recent decisions in Board of Regents v. Roth, 408 U.S. 564 (1972), and Perry v. Sindermann, 408 U.S. 593 (1972), however, "the concept of property encompassed by the Fourteenth Amendment's due process clause . . . has undergone a dramatic expansion over the past two decades." Brown v. Perkins, 706 F. Supp. 633, 634 (N.D. Ill. 1989). For instance, it is now well settled that government employees not terminable at will have a property interest in their continued employment which may only be terminated pursuant to procedures meeting due process requirements.

E.g., Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). In view of this new, expansive approach to property rights, the Fifth Circuit Court of Appeals has twice held, without citing the earlier Supreme Court cases, that "[a]n elected official who is entitled to hold an office under state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process." Crowe v. Lucas, 595 F.2d 985, 993 (5th Cir. 1979); Gordon v. Leatherman, 450 F.2d 562, 565 (5th Cir. 1971); accord City of Ludowici v. Stapleton, 258 Ga. 868, 375 S.E.2d 855, 856 (1989).

More fundamentally, the court below erred in even requiring Senator Pecora to demonstrate the existence of a "constitutionally protected interest" in his office. Senator Pecora's challenge to the

legislative reapportionment approved by the Commission was premised on a violation of the equal protection clause of the fourteenth amendment, not the due process clause. While a plaintiff must show a protected property or liberty interest in his or her continued employment in order to make out a violation of procedural due process, see Board of Regents v. Roth, supra, 408 U.S. at 569-72, this Court has held that the plaintiff's lack of such a protected liberty or property interest in continued employment does not defeat a claim that a dismissal or nonrenewal of employment violated the plaintiff's other constitutional rights, such as First Amendment rights. Perry v. Sindermann, supra, 408 U.S. at 596-98. Thus, "the constitutional right to equal protection with regard to public employment does not depend on the existence of

a property interest in that employment." Poolaw v. City of Anadarko, 660 F.2d 459, 462 (10th Cir. 1981), cert. denied, 469 U.S. 1108 (1985); McAdoo v. Toll, 615 F. Supp. 1309, 1313 (D. Md. 1985).

In view of these authorities, Senator Pecora's right to equal protection with respect to his ability to serve out his term of office as a State Senator does not depend upon a demonstration of a protected property or liberty interest in that office. The court below therefore erred in concluding that Senator Pecora's failure to show such a "constitutionally protected interest" barred consideration of Senator Pecora's equal protection claims of arbitrary treatment and political gerrymandering.

In rejecting political gerrymandering claims advanced by two other appellants, the Pennsylvania Supreme Court al-

so improperly treated the plurality opinion in Davis v. Bandemer, 478 U.S. 109 (1986), as if it were the holding of the full Court (SA 33-35). As pointed out in Senator Pecora's Petition, however, a majority of the Court has yet to adopt a uniform test or standard for evaluating claims of political gerrymandering under the equal protection clause.

Moreover, the test adopted by the plurality in Davis was specifically designed for evaluating a political gerrymandering claim advanced by the disappointed voters of one particular political party. The strict test promulgated by the Davis plurality was designed to weed out claims where the plaintiffs had not actually suffered any constitutionally significant injury in the form of a dilution of their voting strength by requiring the plaintiffs to show a "history

of disproportionate results appear[ing] in conjunction with strong indicia of lack of political power and the denial of fair representation." Id. at 139.

By contrast, the instant case involves an incumbent legislator's claim of a political gerrymander that had the discriminatory purpose and effect of "squeezing out" that legislator's seat in the legislature in mid-term in order to achieve illegitimate, partisan ends. It is clear that Senator Pecora has already suffered a constitutionally significant injury. Thus, the test that should be applied to Senator Pecora's claim of political gerrymandering is that set forth in Justice Powell's opinion in Davis, requiring only a showing that the boundaries of voting districts have been deliberately and arbitrarily distorted to achieve illegitimate ends. Id. at 177.

Thus, even assuming it can be said that the Pennsylvania Supreme Court addressed and disposed of Senator Pecora's political gerrymandering claim by stating that "[n]o appellant here who raises a political gerrymandering claim has established the requisite elements under the three-part test as set forth in [the plurality opinion in] Davis v. Bandemer, supra" (SA 34), the court below erred in applying the Davis plurality's test to Senator Pecora's claim. This Court should therefore grant the Petition in order to clarify that political gerrymandering claims of the type raised by Senator Pecora require proof solely of a deliberate and arbitrary distortion of voting district boundaries to achieve illegitimate ends.[3]

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[3]The Pennsylvania Supreme Court's Opinion admittedly precludes review of the third question presented in Senator

CONCLUSION

For the foregoing reasons, as well as for those set forth in the Petition previously filed, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ANTHONY J. MARTIN
Counsel of Record
Martin & Martin, P.C.
Monroe Complex, Building One
2520 Mosside Boulevard
Monroeville, Pennsylvania 15146
(412) 372-3879

Pecora's Petition. In view of the state supreme court's ruling that a special election must be held under 25 P.S. § 2778 to fill a vacancy created in the wake of a legislative reapportionment, the First Amendment rights of the citizens of the new 44th Senatorial District to petition for redress of grievances will be adequately protected.

No. 91-1789

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1991

FRANK A. PECORA, Senator,
44th Pennsylvania Senatorial District,
Petitioner,
v.
PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT
COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

SUPPLEMENTAL APPENDIX

Anthony J. Martin
Counsel of Record
Martin & Martin, P.C.
Monroe Complex, Building One
2520 Mossiде Boulevard
Monroeville, Pennsylvania 15146
(412) 372-3879

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[J-32 through 56-1992]
IN THE SUPREME COURT OF PENNSYLVANIA

In Re 1991 PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT COMMISSION	: Nos. 190, 191, 194, 196, 197, 199, 200, and 201 E.D. Misc. Docket 1991
	: Nos. 49, 50, 51, 52, 53, 54, 56, and 57 M.D. Misc. Docket 1991
	: Nos. 124, 132, 133, 134, 135, 136, 137, 138, and 141 W.D. Misc. Docket 1991
	: Appeals of the 1991 Pennsylvania Legislative Reapportionment Commission's Final Plan
	: ARGUED and SUBMITTED: January 25, 1992

OPINION

NIX, C.J. FILED: MAY 1, 1992

FACTS

The Reapportionment Plan at issue is the third reapportionment plan since the 1968 amendment to the Pennsylvania Constitution that created the Legislative

Reapportionment Commission. See Pa. Const. Art. II § 17.

The Legislative Reapportionment Commission consists of five members. Id. The majority and minority leaders of the House and the Senate, or their appointed deputies, choose the fifth member of the Commission as its chair. Id. If the Commission cannot agree on a chair, the Supreme Court is empowered by the Constitution to appoint the chair. Id.[1] The Commission acts by a majority of its members. Id.

On September 25, 1991, a majority of the Commission adopted the preliminary Legislative Reapportionment Plan. After objections were filed by the petitioners and publicly heard at a meeting on Octo-

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[1]This year the Supreme Court appointed Robert J. Cindrich as chairman of the Legislative Reapportionment Commission. See In Re Appointment of Chairman of the Legislative Reapportionment Commission, Judicial Administration Docket No. 105A, May 6, 1991.

ber 9, 1991, the Commission adopted the final plan on November 15, 1991. That plan is now the subject of our review. Pursuant to Subsection 17(d) of Article II of the Pennsylvania Constitution, the above-captioned appellants filed appeals to this Court within thirty days. See Pa. Const. Art. II § 17. On January 25, 1992, oral argument was heard on twenty-three matters, and two matters were submitted on the briefs.

On February 14, 1992, this Court entered an order that the Final Plan was not contrary to the law and denied the appeals. In that order we stated that an opinion would follow.[2]

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[2]Mr. Justice Larsen did not participate in the consideration or decision of these cases.

Mr. Justice Flaherty did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; Nos. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

ISSUES

The present issues before this Court are whether the Final Plan comports with the Pennsylvania and United States Constitutions and the Voting Rights Act. 42 U.S.C. § 1971, et seq. Twenty-five appellants raise a number of similar issues regarding different counties and representative and senatorial districts. These issues may be characterized in the following ways:

1) Did the Reapportionment Commission violate the constitutional requirement of compactness and contiguity and equality of population and the prohibition against the division of political subdivisions

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Mr. Justice Papadakos did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; Nos. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

unless absolutely necessary?

2) Did the Reapportionment Commission's Final Plan violate Federal Constitutional law by depriving various appellants of their rights under the Fourteenth Amendment to the United States Constitution?

3) Does the Plan fail for lack of an effective date, or in the alternative, may the court declare the effective date?

4) Is the Reapportionment Commission prohibited from renumbering even-numbered Senatorial Districts in a year in which odd-numbered seats are elected, in order to avoid the possibility of a special election?

5) Does the Final Plan reflect po-

litical gerrymandering which deprives two aspirants of their rights to run for office in their former districts?

6) Did the Final Plan violate provisions of the Voting Rights Act, 42 U.S.C. § 1971, et seq.?

7) May this Court order Discovery of the Commission members to determine motives for the Reapportionment Plan?

STANDARD OF REVIEW

The Constitution of this Commonwealth directs this Court to entertain appeals from any aggrieved person within thirty days of the filing of the final plan. Pa. Const. Art. II § 17(d). "If the appellant establishes that the final plan is contrary to law, the Supreme

Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order." Id. (emphasis added). As the Constitution clearly states, and as we have held in the past, "to prevail in their challenge to the final reapportionment plan, appellants have the burden of establishing not . . . that there exists an alternative plan which is 'preferable' or 'better', but rather that the final plan filed by the Pennsylvania Reapportionment Commission fails to meet constitutional requirements." In re Reapportionment Plan for Pennsylvania General Assembly, 497 Pa. 525, 532, 442 A.2d 661, 665 (1981); see also Gaffney v. Cummings, 412 U.S. 735, 750-51 ("what is to happen to the Master's Plan if a resourceful mind hits upon a plan better than the Master's by a fraction of a percentage

point? Involvements like these must end at some point but that point constantly recedes if those who litigate need only produce a plan that is marginally better when measured against a rigid and unyielding population equality standard.").

Our Constitution empowers the Legislative Reapportionment Commission to reapportion the Commonwealth. Furthermore, this Court may only undertake to reapportion the Commonwealth if the Commission has not filed a plan within the constitutionally prescribed time limits, Pa. Const. Art. II § 17(g); absent that, this Court may only remand an unconstitutional plan back to the Commission for redrafting. Id. at § 17(d).

BACKGROUND

In the landmark decision recognizing the link between state legislative apportionment and the right to equal protec-

tion under the laws of the states in the Fourteenth Amendment to the United States Constitution, the Supreme Court of the United States in Reynolds v. Sims, 377 U.S. 533 (1964), held that "the Equal Protection clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable". Id. at 577. The Court established a framework for states to reapportion legislative districts built upon the notion that "the overriding objective must be substantial equality of population among the various districts." Id. at 579. The Court recognized that the states have a legitimate interest "to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment

scheme." Id. at 578. Because those two notions of equality of population and integrity of political subdivisions necessarily conflict, the Court clearly established equality of population as the controlling factor, holding that "permitting deviations from population based representation does not mean that each local governmental unit or political subdivision can be given separate representation regardless of population." Id. at 580-81.

At the same time that the Supreme Court of the United States was reviewing the state apportionment plan of the State of Alabama, this Court sustained the objections of Pennsylvania voters to the current reapportionment statutes. In Butcher v. Bloom [hereinafter referred to as Butcher I], 415 Pa. 438, 209 A.2d 556 (1964), this Court, having heard oral argument on the case prior to the filing

of the opinion in Reynolds v. Sims, supra, relied on the United States Supreme Court's ruling in its disposition of the case. This Court reviewed Sections 16 and 17 of Article II of the Pennsylvania Constitution of 1874 which governed the reapportionment of Senate and House districts in the Commonwealth after each federal decennial census. Id. at 444, 209 A.2d at 559.[3] This Court held that

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[3]Those two sections provide as follows:

Sec. 16. Senatorial districts; ratio

The State shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less that four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled

these constitutional provisions did not

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to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty.

Sec. 17. Representative districts

The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

Pa. Const. of 1874 Article II §§ 16, 17.

violate the Fourteenth Amendment to the United States Constitution. Id. at 461-65, 203 A.2d at 570-571. However, the finding was coupled with a new interpretation that the prohibition of dividing wards, boroughs or townships in Section 16 must be "subject always to the overriding objective and mandate that such district shall be 'as nearly equal in population as may be.'" Id. at 463, 209 A.2d at 580 (quoting Pa. Const. of 1874, Art. II § 16). Likewise, the mandate in Section 17 that "each county shall have a [sic] least one representative", Pa. Const. of 1874 Art. II § 17, was interpreted "to require that counties with small population, if necessary, be joined with other counties for the purpose of electing and sharing a representative." Id. at 465, 203 A.2d at 571. This interpretation of the Pennsylvania Constitution received the approval of the

Supreme Court of the United States. Scranton v. Drew, 379 U.S. 40, vacating Drew v. Scranton, 229 F. Supp. 310 (M.D. Pa. 1964).[4]

This Court ordered that the 1964 elections be held according to the then existing reapportionment scheme, but retained jurisdiction in the case. We declared that the reapportionment statutes were unconstitutional, and that the 1966 election could not be held under the

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[4]At the same time that this Court was hearing Butcher I, the United States District Court for the Middle District of Pennsylvania had declared that Section 16 and 17 of Article II of the Pennsylvania Constitution violated the Fourteenth Amendment guarantee of equal protection in the United States Constitution. See 229 F. Supp. 310; Butcher I, 415 A.2d at 443 n.5, 203 A.2d at 559 n.5. The District Court enjoined state officials from conducting the 1964 elections. A stay was granted on the District Court order pending appeal to the Supreme Court of the United States, and that Court vacated the District Court's judgment based upon this Court's holding in Butcher I. Scranton v. Drew, 379 U.S. at 42; see Butcher v. Bloom, [hereinafter referred to as Butcher II], 420 Pa. 305, 308 n.7, 216 A.2d 457, 458 n.7 (1966).

unconstitutional statutes. Because of the inaction of the General Assembly, on September 25, 1965, this Court proceeded to reapportion the Commonwealth; after receiving proposals from various parties in interest, we adopted a new plan for the reapportionment of the state into fifty Senatorial Districts and two hundred three Representative Districts. Butcher II, 420 Pa. at 310, 216 A.2d at 459. In addition, the Court ordered that the 1966 plan remain "in force and effect until constitutionally altered." Id.

In 1968 the citizens of Pennsylvania amended the Constitution, and merged former Sections 16 and 17 into the amended Section 16. Pa. Const. Art. II § 16 (as amended); see Commonwealth ex rel. Specter v. Levin, 448 Pa. 1, 5, 293 A.2d 15, 18 (1972). This Section now provides:

> The Commonwealth shall be divided into fifty Senatorial

> District and two-hundred and three Representative Districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each Senatorial District shall elect one Senator and each Representative District one Representative. Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming either a Senatorial or Representative district.

Pa. Const. Art. 2 § 16.

DISCUSSION

After both the 1970 and the 1980 Federal Census, this Court reviewed the constitutionality of the Pennsylvania Legislative Reapportionment Commission Final Plans. See In re Reapportionment Plan for Pennsylvania General Assembly, 497 Pa. 525, 442 A.2d 661 (1982) (hereinafter In re Reapportionment Plan); Commonwealth ex rel. Specter v. Levin, 448 Pa. 1, 293 A.2d 15, appeal dismissed, 409 U.S. 810 (1972) (hereinafter Specter).

In Specter, we held that "the 'overriding objective' of any plan must be 'substantial equality of population among the various districts.'" 448 Pa. at 13, 293 A.2d at 21 (quoting Reynolds v. Sims, 377 U.S. 533, 579 (1964)). We recognized the inherent conflict in the Pennsylvania Constitution between the goal of equally populated districts and the directive against dividing any counties, cities, incorporated towns, boroughs, townships or wards. In re Reapportionment Plan, 497 Pa. at 535-36, 442 A.2d at 666.

> With a fixed number of legislative seats to be apportioned "as nearly equal in population as practicable" and a "population density of this state [that] is quite uneven" in any apportionment scheme there is a certain degree of unavoidable noncompactness and a certain amount of subdivision fragmentation [that] is inevitable.

Id. (quoting Specter, 448 Pa. at 17-18, 293 A.2d at 23). We continue to hold the view that the equality of population

necessitates dividing political subdivisions. It would defy logic to argue that counties cannot be divided to apportion the senatorial and the representative districts when the ideal senatorial district population is 237,633, and the ideal representative district population is 58,531, yet fifteen counties have greater populations than the ideal senate district, and forty counties exceed the ideal representative district population. See 110 Pa. Manual 533 (1991)[.]

The 1991 Final Plan has a total population deviation in its fifty senatorial districts of 1.87% from the ideal population of 237,633. The population deviation for the 203 representative districts is 4.94% from the ideal population of 58,531. This plan compares favorably with the final plans in Specter and In Re

Reapportionment Plan.[5]

The Appellants argue that the population equality is not so important that it warrants the division of counties and other political subdivision. They cite federal precedent which has upheld state reapportionment plans with variances of up to 16%.[6] Appellants argue that these cases bind this Court to require greater populations variances to protect the sanctity of political subdivision bor-

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[5]Total Percentage Deviation from Ideal District Population (Ideal in Parentheses)

	Senate	House
1991	1.87% (237.633)	4.94% (58,531)
1981	1.93% (237,334)	2.81% (58,456)
1971	4.31% (235,949)	5.45% (58,113)

[6]See Brown v. Thompson, 462 U.S. 835 (1983) (average deviation of 16%); Gaffney v. Cummings, 412 U.S. 735 (1983) (7.83% maximum deviation); White v. Regester, 412 U.S. 755 (1973) (9.9% maximum deviation).

ders. Appellants are incorrect. The Supreme Court of the United States held that "some deviations from the equal population principle are constitutionally permissible with respect to the reapportionment of seats in a state legislature." Reynolds v. Sims, 379 U.S. at 579 (emphasis added). This language merely allows a state to apportion seats between districts that are not strictly equal in population; it does not mandate it. Our Constitution requires that the overriding objective of reapportionment is equality of population, and in 1972 and 1981 this Court approved plans in which the overriding objective was equality of population. We see no reason now in 1992 to retreat from those earlier holdings.

EFFECTIVE DATE

Appellants raise the issue of the effective date of the 1992 Reapportion-

ment Plan. Two arguments are raised. First, the plan is unconstitutional because it does not state the effective date and therefore one appellant whose residence is now outside of his senatorial district may not be able to retain his office. The same appellant asked this Court to exercise its extraordinary jurisdiction to declare an effective date of the Plan after the November 1992 election.

The Constitution of the Commonwealth of Pennsylvania is very clear on the effective date of a Reapportionment Plan. Pa. Const. Art. II § 17(e). It states in pertinent part:

> "When the Supreme Court has finally decided on an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17."

Id. (emphasis added).

Appellants request that we declare the effective date to be after the 1992 election with respect to those senatorial districts that are not slated for general election in 1992, i.e., the even-numbered Senatorial Districts. We have no power to grant that relief as our Constitution sets the effective date of the plan as above. The effective date of this plan was February 14, 1992, the day that this Court issued an order dismissing the above appeals.[7]

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[7]Appellant Lewis raises a residency issue as well in his appeal from the final plan, and alleges that it will be impossible for an incumbent senator to have resided in his district for a year before the election, and for all four years of his tenure (as mandated by the Constitution) if the Senatorial Districts are altered by the Reapportionment Commission. This issue is not yet ripe for review because no senator has suffered adverse consequences in the form of losing a seat for failure to satisfy the residency requirement. However, we would note that the constitutional residency requirements may conflict with the constitutional mandate of reapportioning the

44TH DISTRICT

The Final Plan includes a new Senatorial District No. 44 comprising parts of Chester, Lehigh, Berks and Montgomery counties. The former Senatorial District 44 in Western Pennsylvania was merged with District 43. District 44, as an even-numbered District, is not slated for a general election until 1994. See 25 P.S. § 2209. Appellants Senator Frank Pecora, Republican Committee of Chester County, and Senator F. Joseph Loeper argue that the new district must be odd-numbered to prevent a lapse in represen-

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Commonwealth every ten years. In light of that conflict, it may be necessary that residency requirements be waived when the Commission reapportions the Commonwealth less than one year before an election. These issues and possible resolutions are for the Senate to decide. See In re Jones, 505 Pa. 50, 476 A.2d 1287 (1984). This Court will reserve ruling on this issue until such time that a particular party suffers injury at which point we will address the apparent conflict between the constitutional provisions.

tation. The Commission responds with the argument that neither this Court nor the Commission has the authority to declare the 44th District vacant, but only the Senate has the power. Furthermore, the Commission argues that the citizens in District 44 will not be deprived of a Senator because a special election may be called in the event of a vacancy. See 25 P.S. § 2778.

Appellants argue that the staggered election mandated by Section 2209 of the Election Code, 25 P.S. § 2209, will be interrupted by the creation of a new even-numbered district. They argue that the only time the election scheme was interrupted was in 1966 when this Court reapportioned the Commonwealth and ordered that the Senators from the odd numbered-districts be only elected for two years. See Butcher II, 420 Pa. at 310, 216 A.2d at 459. Appellants argue that

only when this Court declares a prior plan unconstitutional and undertakes to reapportion the Commonwealth itself may the terms of office be shortened. Because this Court had declared in 1964 that the plan was unconstitutional, Butcher I, 415 Pa. at 455 and 468, 203 A.2d at 566 and 573, the candidates and incumbents were on notice that their terms may be truncated.

The Constitution clearly states that "the reapportionment shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this Section 17." Pa. Const. Art. II § 17(e) (emphasis added). The Constitution does not state "if required." Thus on its face the Constitution clearly establishes a termination date for the reapportionment plan. Nowhere in Section 17 is

there authorization to continue to use a prior plan, and if the Commission fails to produce a plan within the prescribed time limit, "the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth." Pa. Const. Art. II § 17(g). Therefore, each Senator, whether in an odd- or even-numbered District, is on notice after a Federal Decennial Census that the prior reapportionment plan is no longer effective and the new districts may be drawn in a manner that separates the Senators' districts from their residences. Senator Pecora's and Senator Lewis' appeals are similarly grounded in the fact that the Senators' residences are no longer located within the senatorial districts that they represent. Their only difference is one of degree, i.e., Senator Pecora lives hundreds of miles away from his district, while Senator Lewis only

lives in the neighboring district. However, the result is exactly the same. The districts in question are not slated for election until 1994 yet neither district has its duly elected senator residing within its borders.

Our review of the Plan is limited to those enumerated constitutional requirements in Section 16 of Article II of our Constitution. That Section does not include a requirement that all senatorial districts be redrawn in such a manner that incumbent senators remain residents of their redrawn districts. The party leaders of both houses of the General Assembly adequately represent the interests of incumbents and it is within their sole discretion as members of the Legislative Reapportionment Commission to consider those interests when renumbering and redrawing the legislative districts.

In addition, Senators Pecora and

Lewis are not automatically expelled from their Senate seats by the Commission's actions. Only the Senate has the authority to judge the qualifications of its members. In re Jones, 505 Pa. 50, 58, 476 A.2d 1287, 1290-91 (1984); see Pa. Const. Art. II § 9. In Jones we held:

> Article II is concerned with the composition, powers and duties of the legislature. Nothing in this article even remotely suggests the conferrence of jurisdiction upon the courts to test the qualifications of the members of the General Assembly. Indeed, Section 9 of Article II expressly states that each body of the General Assembly shall be the judge of the qualifications of its members.

In re Jones, 505 Pa. at 58, 476 A.2d at 1291 (footnote omitted). Thus the Senators incorrectly characterize the Commission's actions as depriving the Senators of their offices.

Assuming that the Senate does not seat Senators Pecora and Lewis, nonetheless the Senators are not being deprived

of a constitutionally protected interest. Appellants' interest in their offices is a "highly circumscribed" interest. Sweeney v. Tucker, 473 Pa. 493, 524, 375 A.2d 698, 713 (1977).

> An elected office is a public trust, not the private domain of the officeholder. A member of the Legislature has a profound responsibility to represent his constituents in the formation of public policy in this state. He holds office for the benefit of his constituents . . . [and] is periodically accountable to his constituents through the electoral process. . . . A member of the Legislature is thus subject to the political process at all times. . . . This is properly so for the public interest in the office far outweighs any private interest of the officeholder. An elected official can never have tenure in the same sense as an ordinary public employee.

Id. Thus as we have held in the past, elected officials' interest in their offices does not merit constitutional protection. Id. See also In re Reapportionment of the School District of the

City of Pittsburgh, 507 Pa. 128, 488 A.2d 1106 (1985) (school directors have no legal right to serve out their elective terms superseding need for reapportioning of school districts); Commonwealth v. Moir, 199 Pa. 524, 49 A. 351 (1901); Lyons v. City of Pittsburgh, 137 Pa. Commw. 130, 586 A.2d 469, allocatur denied, ___ Pa. ___ 593 A.2d 845 (1991).

These appellants, and the Republican Committee of Chester County and Senator Loeper raise the argument that the citizens of the Sixth and Forty-fourth Senatorial Districts will be without senators for the next two years and will be deprived of the right to petition the government for redress of their grievances. This argument also fails.

If the Senate will not seat Senators Pecora and Lewis, the citizens of the district will be represented in the Senate by operation of the special election

statute. See 25 P.S. § 2778.[8] Anytime a vacancy occurs in a legislative district, the presiding officer of the house is required to call for a special election. Id. This is regardless of the underlying

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[8] § 2778. Special elections for Senator and Representative in The General Assembly

Whenever a vacancy shall occur in either house of the General Assembly whether or not it then be in session, the presiding officer of such house shall issue a writ of election to the proper county board or boards of election and to the Secretary of the Commonwealth, for a special election to fill said vacancy, which election shall be held on a date named in the writ, which shall be not less than sixty (60) days after the issuance of said writ. The presiding officer may fix, in such writ of election, the date of the next ensuing primary, municipal or general election as the date for holding any such special election: Provided, however, That should the Governor after the issuance of said writ of election advise the presiding officer that the General Assembly will be called into extraordinary session prior to the date set for such special election, the presiding office may countermand the writ theretofore issued and shall issue a new writ of election, fixing therein such earlier date therefor as is deemed expedient, but which shall not be less than sixty (60) days after the issuance of said writ.

cause of the vacancy, be it death, resignation or expulsion. It is to be noted that the appellants are not arguing that the special election statute itself is an unconstitutional deprivation of the citizen's right to elect legislators and to petition the government for redress of grievances. No persuasive reason has been offered to hold that the special election statute in is application to a vacancy created by the reapportionment is unconstitutional.[9]

GERRYMANDERING

Appellants' claims may be catego-

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[9]This Court has never addressed the constitutionality of the special election statute for members of the General Assembly. However, in an analogous case, the United States Court of Appeals for the Third Circuit upheld as constitutional the special election statute governing a temporary vacancy in a United States Senate seat. Trinsey v. Commonwealth of Pennsylvania, 941 F.2d 224 (3rd Cir.) rev'g 766 F. Supp. 1338 (E.D. Pa.), cert. denied, ___ U.S. ___, 60 U.S.L.W. 3376 (1991).

rized as a denial of access to the political process. They include a claim of political gerrymandering, a claim of deprivation of free and equal elections, and a violation of equal protection under the State and Federal Constitutions. These arguments fail.

The Supreme Court of the United States in Davis v. Bandemer, 478 U.S. 109 (1986), addressed the political gerrymandering issue in the Indiana General Assembly's Reapportionment Plan after the 1980 census. In that case, the Court upheld the General Assembly's plan which allegedly disadvantaged the Democratic Party. The Court held that a political gerrymandering claim was a justiciable question and that members of one political party could bring a cause of action under the 14th Amendment to the Constitution of the United States Constitution alleging that their votes had been inten-

tionally rendered ineffective to elect the representative of their choice. Id. at 126-28. The Court however, reversed the District Court's verdict in favor of the Democrats because they had failed to establish a case. Id. at 143. The Court set out the following elements to prove a case: the plaintiff must establish: 1) intentional discrimination against an identifiable political group; 2) an actual discriminating effect on that group; and 3) a "history of disproportionate results appear[ing] in conjunction with strong indicia of lack of political power and the denial of fair representation." Id. at 139. This Court is persuaded by the holding of the Supreme Court of the United States with regard to the elements of a prima facie case of political gerrymandering. No appellant here who raises a political gerrymandering claim has established the requisite elements under

the three-part test as set forth in Davis v. Bandemer, supra.

Appellants Jones' and Roberts' claims of political gerrymandering fail because they are individual candidates seeking to run against incumbents without any evidence of their being part of an identifiable group suffering a history of disenfranchisement or lack of political power. There is no precedent in this state nor in the Federal Courts for a claim arising from the deprivation of an individual's right to run for a particular office nor of a citizens' right to vote for a specific individual.

Appellants claim that the plan violates the constitutional mandate that "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. Art. I § 5. This plan does not

violate Section 5 of Article I of our Constitution. This Court has defined Section 5 in the following manner:

> '[E]lections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, . . . and when no constitutional right of the qualified elector is subverted or denied him.'

City Council of City of Bethlehem v. Marcincin, 512 Pa. 1, 8, 515 A.2d 1320, 1232 (1986) (quoting Shankey v. Staisey, 436 Pa. 65, 69, 257 A.2d 897, 898 (1969), cert. denied, 396 U.S. 1038 (1970)). Using this analysis, we find that the Commission's final plan in no way deprives Appellants or any citizens of this Commonwealth of their right to free and equal elections. A candidate's interest in a specific office can only be less

than the incumbent's interest, which has already been characterized as "highly circumscribed". Sweeney v. Tucker, 473 Pa. at 524, 375 A.2d at 713. The aspirant has a right to run in his district for any office for which he is qualified; however, his right to run for office does not rise to a constitutionally protected level requiring the Legislative Reapportionment Commission to tailor its plan around the residences of political aspirants who seek to challenge a specific incumbent.

VOTING RIGHTS ACT

Several appellants raise objections to the Final Plan based upon the Voting Rights Act, 42 U.S.C. § 1971 et seq. (1988). The specific section implicated is Section 2 of the Act which provides:

> **§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequi-**

sites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members

> of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (1988). The United States Supreme Court described the intended scope of the section as follows:

> Subsection 2(a) prohibits all States and political subdivisions from imposing <u>any</u> voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of a citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes that § 2 has been violated where the "totality of the circumstances" reveal that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

<u>Thornburg v. Gingles</u>, 478 U.S. 30, 43 (1986) (quoting 42 U.S.C. § 1973(b)).

It must be recognized that Appellants Loeper, <u>et al.</u>, are not bringing an

action for relief under the Voting Rights Act, but rather they are challenging the proposed plan on the ground that it does not conform with the Act.[10] They assert that the establishment of minority/majority districts can only be satisfied by providing for the creation of districts

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[10]Appellants Clarence Thompson, Leroy Green and Henrietta Bennett all raise claims under Section 2 of the Voting Rights Act as "aggrieved persons", 42 U.S.C. 1973. While it is true that they satisfy the standing requirements, see Roberts v. Wamser, 883 F.2d 617, 621 (8th Cir. 1989) ("those seek[ing] judicial enforcement of the prohibition against the infringement of the right to vote on account of race"), they are not in the proper forum to prosecute a claim under the Voting Rights Act. See 42 U.S.C. § 1971(d) (granting jurisdiction to the United States District Courts).

Our Constitution requires this Court to determine whether "the plan is contrary to law." Pa. Const. Art. II, § 17(d). Therefore, the plan must be in accord with both State and Federal Law. In this instance it is being argued that Federal Law (i.e., the Voting Rights Act) would be violated by the final plan. Thus, we are called upon to address the legitimacy of the appellants' claim. For the reasons set forth in the text, it is our view that the plan is not contrary to the Voting Rights Act.

which provide the minority/majority district with a 65% minority population. They argue that the Final Plan (with 60% to 62% proportions) fails to comply with the provisions of the Act and, therefore, must be rejected in favor of the plan they offer which establishes the required 65% proportion under the Act. They characterize the districts created under the Commission's plan as minority influence districts, thus assuming the premise they seek to establish. The question presented for our resolution is whether the Commission's plan is defective in this regard. Thus the lynchpin of the Appellants' argument is that, absent the establishment of a 65% minority population, the Commission's plan is fatally flawed and thus must be rejected. For the reasons that follow, we find this assertion to be without merit.

The Voting Rights Act, 42 U.S.C. §§

1971-1974, as amended in 1982, established a statutory cause of action which recognizes claims charging that a "standard, practice, or procedure" results in discrimination on the basis of race. 42 U.S.C. § 1973 (hereinafter referred to as Section 2 of the Voting Rights Act). In 1982, Congress amended Section 2 of the Voting Rights Act in response to the United States Supreme Court decision in City of Mobile v. Bolden, 446 U.S. 55 (1980).

In Bolden, a class action was successfully brought in the United States District Court for the Southern District of Alabama on behalf of the Black residents of the City of Mobile. The suit alleged that the City's practice of electing commissioners at large by majority vote unfairly diluted the voting strength of Blacks in violation of the Fourteenth and Fifteenth Amendments of

the Federal Constitution. Id. The District Court found the City's plan unconstitutional, and the United States Court of Appeals for the Fifth Circuit affirmed the District Court's ruling. Id. at 58. On appeal, the United States Supreme Court, although unable to agree on a majority opinion, reversed the decision of the United States District Court. Justice Stewart, in an Opinion Announcing the Judgment of the Court, joined by then Chief Justice Berger and Justices Powell and Rehnquist, reasoned that, once the court below found that Blacks could register and vote without hindrance, it was error to find that the Fifteenth Amendment was offended. Id. at 65. This conclusion was based upon the premise that the Fifteenth Amendment does not guarantee the right to have Black candidates elected, but prohibits only intentionally discriminatory denial or abridgment by

the government of the freedom to vote on account of race. These justices also found no purposeful discrimination in the voting practices under the guarantee of equal protection under the Fourteenth Amendment in view of the failure of the evidence presented to establish that the at-large voting practice was a purposeful device to further racial discrimination. Id. at 74.[11]

In dissent, Mr. Justice Marshall articulated the view that proof of a discriminatory purpose to support a claim of vote dilution in violation of the Fourteenth and Fifteenth Amendments is not necessary. Id. at 103-105. To the contrary, he reasoned that the City's at-large electoral scheme was violative of the Fourteenth and Fifteenth Amendments since it had the unconstitutional effect

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[11]Justice Blackman concurred in the result, id. at 80, and Justice Stevens concurred in the judgment, id. at 83.

of diluting the Black vote.[12] He reasoned that even if it were necessary to support a claim under these constitutional amendments with a showing of discriminatory purpose, that requirement had been satisfied by showing that official action was produced by pervasive racial bias as shown in the evidence in the case under consideration.

Justice Brennan dissented and agreed with Justice Marshall that proof of a discriminatory impact was sufficient in

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[12]One distinction between the opinion of the Court and the dissenting opinion of Mr. Justice Marshall is that Mr. Justice Marshall characterized the right to cast an effective vote as fundamental. As a result, the deprivation of a fundamental right requires strict scrutiny without any showing of discriminatory purpose. This differs from the plurality's decision that the only fundamental right is participation on equal footing with other voters. There is no constitutional right to equal representation for identifiable political groups, and, therefore, a deprivation of the right to equal representation based upon racial consideration must be accompanied by a discriminatory purpose in order to merit strict scrutiny.

the matter then before the Court and alternatively that discriminatory intent had been proven. Id. at 94. Justice White also in dissent expressed the view that discriminatory purpose could be and had correctly been inferred from the evidence of discriminatory impact. Id. at 94-103.

Following the Bolden decision,[13] the Supreme Court in Thornburg v. Gingles, 478 U.S. 30 (1986), set forth the elements that must be established by plaintiffs to declare a plan violative of the Voting Rights Act. The Court required the plaintiffs to show that:

> [F]irst, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to

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[13]As a result of the Bolden decision, Congress, in 1982, amended the Voting Rights Act and created what is now known as the "results test". The Supreme Court, in 1986, interpreted the "results test" for the first time after the amendment in Thornburg v. Gingles, 478 U.S. 10 (1986).

> constitute a majority in a single number district. . . . [S]econd, the minority group must be able to show that it is politically cohesive. . . . [T]hird, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.

Id. at 50-51 (citations and footnote omitted).

We will first address the complaint being raised to the Plan as it relates to the Senatorial Districts representing the City of Philadelphia. Appellants argue that the plan for Philadelphia fails to provide for any minority/majority districts where the minority population warrants such districts. Specifically, appellants assert that the plan drafted by the Commission has no "classic [Senatorial] minority/majority districts." Appellants argue that the Commission "deliberately created a retrogressive plan resulting in the destruction of the three

existing minority/majority seats and replacing them with four minority influence districts." Appellants further charge that their proposed plan included four "classic" minority/majority senatorial districts within Philadelphia.

Prior to the 1991 reapportionment, three out of the seven Senatorial Districts from Philadelphia were minority/majority districts, each being represented by Black senators.[14] The plan proposed by the Commission also provides for a fourth minority/majority senatorial seat for Philadelphia. In both the Commission's plan and the plan proposed by

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[14]The Third Senatorial District is currently represented by Senator Roxanne H. Jones, the Seventh Senatorial District is currently represented by Senator Chakah Fattah, and the Eighth Senatorial District is currently represented by Senator Hardy Williams. 110 Pa. Manual 95-96 (1991). None of the present incumbents have joined in the instant attack upon the Commission's plan, nor have they evinced in any way their concurrence in the alleged concerns.

the petitioners, the four proposed Senatorial Districts would contain a majority of voting age minorities. The issue being raised is the size of the minority's voting age proportion that is required under Section 2 of the Voting Rights Act to be classified as a minority/majority district.

It must be emphasized that the scope of the instant challenge is very narrow. The test that has been established for determining the viability of the Commission's plan is whether or not the plan meets constitutional requirements. Pa. Const. Art. II § 17(d). The mere fact that other plans may be offered is of no moment, unless appellants establish that the plan submitted by the Commission is "contrary to law." Pa. Const. Art. II § 17(d); see In Re Reapportionment Plan, 497 Pa. at 932, 442 A.2d at 665; see also Gaffney v. Cummings, 412 U.S. at 750-51.

Once that plan is found to meet constitutional mandates, the issue of the merits of any proposed plan is irrelevant. Id.

The issue to be focused upon is the interpretation sought by appellants to determine when a group is to be considered "sufficiently large and geographically compact to constitute a majority in a single member district . . . ." Thornburg v. Gingles, 478 U.S. at 50 (1986). Appellants insist that this requires the creation of districts with 65% minority populations. The Commission's plan created four minority/majority districts ranging from 60% to 62% of minority population (56% to 58% voting age population). There is no requirement under Federal law for a 60% to 65% minority population; indeed in Mississippi Republican Executive Committee v. Owen H. Brooks, et al., 469 U.S. 1002 (Memorandum Opinion), aff'g Jordan v. Winter, 604 F.

Supp. 807 (N.D. Miss. 1984), the Supreme Court of the United States affirmed the reapportionment plan of the United States District Court for the Northern District of Mississippi which created a second minority district with a majority of 52.8% black voting age population.[15] Here the Commission's final plan provides for four (4) minority/majority senatorial districts in Philadelphia, ranging in Black voting age population percentages

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[15]The 65% figure has been used by the Department of Justice as a benchmark for preclearance procedures when a state submits its reapportionment plan to the Department of Justice for approval. United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977); Bybicki v. State Board of Elections of Illinois, 574 F.Supp. 1147, 1149 n.4 (N.D. Ill. 1983). However, this 65% benchmark has never been required by the courts, particularly in a district or state which has not been the subject of a determination by the Attorney General under 42 U.S.C. § 1973(b) that tests or devices are maintained to deny or abridge the right to vote based upon racial considerations. Therefore, there is no reason nor authority for this Court to recognize this benchmark in the present appeal.

from 56% to 58%. The Philadelphia Senatorial Delegation under the new plan would consist of seven (7) Senators, three (3) of whom also represent areas from counties surrounding Philadelphia county. Clearly the Commission has attempted to increase minority representation by creating four (4) minority/majority senate seats in Philadelphia whereas the prior plan included only three (3) minority/majority seats.

One of the intents of Congress in its passage of the Voting Rights Act and its subsequent amendments was incorporating minority voters into the entire political process. See Thornburg v. Gingles, 446 U.S. at 36-38. This intent can best be served by having the greatest number of minority/majority districts possible. The statutory language prescribing minority participation in the political process is maximized when there

are more and not fewer opportunities for minorities to elect representatives of their choice.[16] While in this instance both plans could provide four senate seats in minority/majority districts, the plan adopted by the Commission provides for the optimum distribution of the Black population in a manner that would support electing or influencing additional representatives of their choice.

The 1991 plan, which creates an additional minority/majority senatorial district is based on the assumption that minority/majority district requirements are satisfied where the Black voting age population is maintained between 58% and

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[16]The inability of Blacks historically to exercise the right to vote granted by the Fifteenth Amendment was not the result of apathy, but rather from the Black voters' inability to overcome barriers set up by hostile Whites which included poll taxes, literacy tests, intimidation, violence and other schemes more subtle to discourage their participation.

56%. The plan provides for Senate District No. 3 which will have a Black population of 60.63% and a Black voting age population of 58%; Senate District No. 4 which will have a 61.25% Black population and a Black voting age population of 58%; Senate District No. 7 with a Black population of 61.81% and a Black voting age population of 58%; and finally Senate District No. 8 with a Black population of 60.14% and a Black voting age population of 56%. Thus the ultimate result is that Blacks [sic] voters would have the opportunity to enjoy majority status in four (4) of the seven (7) Philadelphia senatorial districts. This result clearly fits within the intent of the Voting Rights Act.

Appellant Loeper also argues that the Commission failed to create a minority influence senate seat in Pittsburgh. A minority influence claim is one

"brought by a minority group, not sufficiently large and compact to constitute a majority in a single-member district and thereby elect the candidate of their choice, but sufficiently large and geographically cohesive to influence elections." Thornburg v. Gingles, 478 U.S. 30, 46 n.12 (1986). See Chisom v. Roemer, 501 U.S._, _ n.24, 115 L. Ed. 2d 348, 364 n.24 (1991); McNeil v. Springfield Park District, 851 F. 2d 937, 947 (7th Cir. 1988), cert. denied, 490 U.S. 1031 (1989). This claim has been raised in the federal courts and consistently denied as neither constitutionally nor statutorily required. See, e.g., Chisom, supra; McNeil, supra; but see, Armour v. State of Ohio, 775 F. Supp. 1044 (N.D. Ohio 1991).[17] This Court, limited in its

[17]The present appeal is clearly distinguishable from the facts and holding of the Armour decision. In Armour, the three-judge panel of the District Court found that there was historical and in-

review of the plan to the constitutional and statutory requirements, is provided no authority to ascertain the appropriate population percentages for the creation of minority influence districts.[18]

DISCOVERY

The final request of various appellants is for this Court to Compel Dis-

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tentional discrimination violating the Voting Rights Act, the Fifteenth Amendment to the United States Constitution, and the Constitution of Ohio. 775 F. Supp. at 1061. It is also noteworthy that the relief ordered by the court in Armour resulted in a minority influence district constituting "nearly one-third of the voting age population." Id. at 1059. In this case, the minority population of the 38th Senatorial District is greater than 34%.

[18]It should be noted that the final plan does contain the 38th Senatorial District in Allegheny County with 34% African-American population. Without establishing any criteria for minority influence districts, this Court would note that it would appear that 34% of the population of a district would provide the minority an opportunity to influence the outcome of elections. See Chisom v. Roemer, 501 U.S. at _ n.24, 115 L. Ed. 2d at 364 n.24.

covery of the underlying motives and purposes of the Commission members and its staff. The Commission raises legislative immunity in its response to Appellants' discovery requests. We need not resolve this issue because we have already held that the plan on its face does not violate the Constitution of Pennsylvania, the Constitution of the United States, or the Voting Rights Act. Therefore any evidence of the motives or discussions of the Commission or its staff is irrelevant and those requests are denied.

CONCLUSION

Accordingly, the final plan of the 1991 Legislative Reapportionment Commission for the Pennsylvania Senate and House of Representatives complies with all constitutional and statutory requirements, and shall be used hereafter in elections to the General Assembly until

the next Reapportionment is constitutionally required.

Mr. Justice Larsen did not participate in the consideration or decision of these cases.

Mr. Justice Flaherty did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; Nos. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

Mr. Justice Papadakos did not participate in the consideration or decision of Nos. 190, 194, 196, 199 and 201 E.D. Misc. Dkt. 1991; No. 49 and 51 M.D. Misc. Dkt. 1991; and No. 138 W.D. Misc. Dkt. 1991.

SENATOR MELLOW: Mr. Chairman, I would just like to briefly add a few comments to what I consider to be the most important issue that we will deal with over the next 10-year period of time.

I think the record must reflect what has taken place over the past several months that I don't believe has been clearly explained on the record, and I share the concerns of the Republican leader in the Senate with regard to the potential constitutional question, where a seat with an even number may in fact be put in the position of having to run next year for a two-year term. And I also share the respect that I think, and I realize that my other fellow colleagues on the Commission and staff members have with the possibility of having a member who has been elected, regardless of whether that person has been elected as a Democrat or a Republican, and have that

person removed from office by someone other than the constituents who have put him there. And it was within that frame of mind that last Thursday that I instructed our staff to make another proposal to the Commission, and that proposal to the Commission really would have addressed the two major concerns that we would have had expressed by all of us.